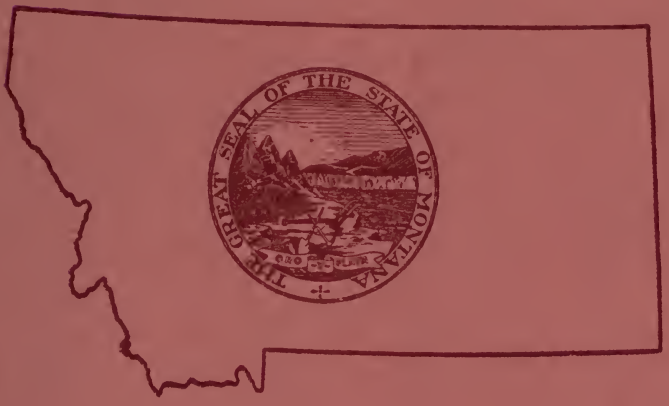
BILL DRAFTING MANUAL

For The

MONTANA LEGISLATIVE ASSEMBLY



Montana Legislative Council

BILL DRAFTING MANUAL

For The
MONTANA LEGISLATIVE
ASSEMBLY

Montana Legislative Council
State Capitol
Helena

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McKEE PRINT

When a bill is hastily brought in, it generally requires mature deliberation, and many amendments in its progress through two houses, which always take up a great deal of time: whereas, when it is maturely considered, and fully concerted, before being brought in, the first draught of the bill is generally so perfect, that it requires but few amendments; and the rapidity of its progress always bears a proportion to the maturity of its first concoction.*

*Sir Charles Wager, in debate with Lord Baltimore, British Parliament, 1739. (Comm. Deb. XI. 116, 117)

PREFACE

This manual is the first of its kind prepared in Montana. It was originally authorized as a staff project by the Legislative Procedures Subcommittee of the 1959-60 Legislative Council; research has continued since early in 1959. The 1961-62 Council authorized its publication.

The lack of uniform standards for the drafting of bills in Montana supplied the impetus for the preparation of the manual. Its main purpose is to provide draftsmen with a reference source to the requirements of Senate and House rules, statutes, constitution and case law, as well as suggestions on the mechanics, technique, and style of legislative drafting.

Apart from decisions of the Montana Supreme Court, little has been written regarding the requirements which must be fulfilled in drafting legislative enactments. Yet a considerable body of "authority" exists, which apparently has been passed on by word of mouth through the decades. This "authority," which is generally accepted uncritically, has established a tangle of inconsistent, indefinite and unnecessary dogma for the guidance of draftsmen. Consequently, the quality of our legislation is marred by the inclusion of non-essential material and archaisms. Another purpose of the manual is to explore and critically discuss the legend and hearsay which surrounds bill drafting in Montana.

Most of the comments on style and form represent what is considered the best form, but not necessarily the only possible legal form. Grammar, punctuation, capitalization and style generally are optional. The manual offers suggestions, but does not purport to estabish rules.

Even when the subject discussed is of a purely legal nature, no attempt has been made to synthesize statutes, rules and case law into rigid maxims, unless the authority is clear and indisputable. The cases and statutes are reviewed and analyzed but the final interpretation of them is usually left to the reader.

As many contingencies have been covered as could reasonably be expected in a publication of this size; yet in almost any drafting job questions will arise which must

be answered by the draftsman himself. This manual is no substitute for legal research—or for the experience, judgment and aptitude of the attorney—all of which will affect the quality of the drafted bill. It is hoped, however, that the guide lines set out here will be of some assistance to Montana attorneys who draft legislation for introduction in the Montana Legislative Assembly.

A number of legislators and attorneys reviewed a preliminary draft of this publication and offered suggestions for its improvement. As a result of these suggestions several changes were made. The contribution of two former council bill drafters is also acknowledged—James A. Johnson provided some helpful ideas during the early stages of preparation; Robert A. Tucker worked on a preliminary draft. Of course, those who provided such assistance are absolved of all responsibility for any errors or omissions.

Because this manual was a staff project, its contents should not be interpreted as council recommendations.

January, 1962

EUGENE C. TIDBALL
Executive Director
Montana Legislative Council

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Chapter I

THE DRAFTSMAN'S JOB

Determining the objectives and scope of a bill is the prerogative of the legislator. The bill drafter's function is not to supply substance or determine policy but to translate general principles and policies into legal language. He may not express his personal thoughts or promote his own interests, but must remain an impartial technician; otherwise, the legislation may contain ideas or implications which the sponsor did not intend.

The first and most important step in preparing legislation is to comprehend clearly the sponsor's objectives, and to gain a thorough understanding of what the measure is intended to accomplish. In some cases, several consultations with the legislator may be necessary to resolve policy questions which were not anticipated in the initial instructions, but which arose in the process of drafting.

The second step is to carry out whatever research is necessary to prepare a good bill. The draftsman should check the constitution, the statutes, and annotated cases. A working knowledge of administrative organization, procedures, and precedents may be necessary. Laws of other states on the same subject often are helpful, but should not be adopted unless they are compatible with existing Montana statutes.

The third step is to develop a definite plan for organizing and arranging the proposed content. Clarity of expression will only grow out of clarity of thought and construction. In some cases, an orderly and logical development of the bill will require that several tentative outlines be made. Numerous drafts of a particular bill may be necessary to achieve accuracy of expression.

Few legislative proposals are completely new. Most amend, replace, or supplement existing statutes. It is, therefore, very important that the draftsman review all statutes on the subject of the bill before preparing the final draft. He may find that a substantially similar law is

already in force, or that the proposed law is inconsistent with other statutes which must be amended to avoid unintentional conflicts. The draftsman must also know whether statutes on the same subject have been amended during the current session.

A bill drafter needs to be thoroughly familiar with constitutional limitations on legislation. Although it is not his job to rule on the constitutionality or merit of a bill, he may bring to the sponsor's attention any proposal which appears to contravene constitutional restrictions. The careful draftsman also will check court decisions to see whether similar legislation previously has been declared unconstitutional. If so, he may be able to draft the new legislation to overcome the court's objections.

Chapter II
STYLE AND LANGUAGE

It is important to legislators, courts, lawyers, state and local governmental agencies, institutions, and the public generally that the enactments of the legislative assembly be written in a simple, clear and direct style, phrased for the common reader as well as for the political or legal expert.

A poorly drafted, ambiguous bill may create confusion, waste the time of citizens affected, confuse those charged with its administration, lead to litigation, and ultimately fail to accomplish the purpose of the author. Good drafting requires concise wording that is understandable by a person who has no special knowledge of the subject. If a paragraph in a bill has to be paraphrased to make it intelligible to a layman, it needs revising.

"In point of form, the merit of law consists of brevity, simplicity, intelligibility and certainty so that its provisions may be easily found, easily comprehended, and promptly applied," said James Bryce. In Montana, the common-law tradition is much in evidence in the time-worn, nonessential, sonorous phrases and rhetorical flourishes found in our legislative enactments.

GRAMMAR

Generally, the ordinary rules of grammar apply to legal writing; however, in a few instances a departure from common usage is suggested.

Tense

Use the present tense; the law speaks in the present.

The unnecessary use of the future tense is an awkward practice. Each law is designed to give a rule for the continuing present. The present tense is a simple and natural form of expression. "The present tense includes the future as well as the present."[1]

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[1] Sec. 19-103, R.C.M. 1947

EXAMPLE A defendant in a criminal action shall be presumed to be innocent until the contrary shall be proved, and in case of a reasonable doubt whether his guilt shall be satisfactorily shown, he shall be entitled to an acquittal. [Future tense]

EXAMPLE A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal. [Present tense]

Voice

Use the active voice instead of the passive.

EXAMPLE The board shall appoint a director. [Active]

EXAMPLE A director shall be appointed by the board. [Passive]

The active voice gives the agent, the doer, its logical position before the verb, thus preserving the basic pattern of the English sentence.

Number

The singular should be used instead of the plural when possible.

EXAMPLE Defendants in a criminal action are presumed innocent until the contrary is proved. [Plural]

EXAMPLE A defendant in a criminal action is presumed innocent until the contrary is proved. [Singular]

"The singular number includes the plural."[2]

Gender

Avoid using "he or she" and "his or hers" when referring to a person affected by a statute. "Words used in the masculine gender include the feminine and neuter."[3]

[2] Sec. 19-103, R.C.M. 1947
[3] Sec. 19-103, R.C.M. 1947

Mood

The draftsman should avoid the "false imperative." That is, the word "shall" should not be used to state a legal result.

EXAMPLE The term "commission" shall mean the water commission.

EXAMPLE The term "commission" means the water commission. [Preferred]

EXAMPLE A person who violates this act shall be guilty of a misdemeanor.

EXAMPLE A person who violates this act is guilty of a misdemeanor. [Preferred]

However, the word "shall" should be used in mandatory statutes prohibiting or requiring a certain legal act.

EXAMPLE The board shall specify in the advertisement the amount and kind of each article required.

"Shall" and "May"

Whenever possible, use the word "shall" only in an imperative sense and "may" in a permissive sense. Where a right, privilege or power is conferred, "may" should be used.[4] Where an official is authorized but not ordered to act, "may" is strengthened by the addition of the phrase "in his discretion," for then the authority to act cannot be construed as a duty to act.[5] If an obligation to act is intended, use "shall."

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[4] In construing statutes, the synonymous terms "must" and "shall" are general interpreted as mandatory, and the term "may" is generally construed as permissive or directory only. **State ex rel McCabe v. District Court,** 106 Mont. 272.

[5] It is a general principle in statutory construction that where the word "may" is used in conferring power upon an officer, court or tribunal, and the public or third person has an interest in the exercise of the power, the exercise of the power becomes imperative. **Adoption of Bascom,** 126 Mont. 129. See also 25 Mont. 24, 98 Mont. 399.

"May not" and "Shall not"

Both "may not" and shall not" are used to abridge a right, privilege or power.

EXAMPLE An organization established under this act may not participate in any form of political activity.

EXAMPLE The state fire marshal shall not engage in any other business.

Some authorities distinguish between "may not" and "shall not," holding that the latter is appropriate when "an obligation not to act" is imposed. For practical purposes, however, the two would seem interchangeable.

Articles and Demonstrative Adjectives

"A person who violates" is preferred to "any person who violates," "each person who violates," or "all persons who violate." Consistent use of the articles "a" or "an" will result in smoother writing and more precise expression.

"Such" person or "said" board should also be avoided. "Said" is archaic and should never be used. Usually "such" can be avoided by referring to "the board," "an institution," "a person," "these laws," etc., or by employing the appropriate pronoun such as "he" or "it." However, occasionally "such" may be needed to identify the thing to which it refers, and should be used if necessary to avoid ambiguity.

CAPITALIZATION, PUNCTUATION, ABBREVIATION, NUMBERS, DATES AND TIME

Capitalization

A departure from the ordinary rules of capitalization is suggested for legislative drafting. In general, capitalize as little as possible. The lower case is easier to read and easier to write.

Capitalization is not part of the law and it has been the practice of the codifier to minimize capitalization when compiling the laws into the Revised Codes of Montana.

EXAMPLE "43-205. The legislative assembly shall meet at the seat of government, at twelve o'clock, noon, on the first Monday of January, 1897, and each alternate year thereafter, and at other times when convened by the governor."

EXAMPLE "43-101. Each county of the state of Montana shall constitute a senatorial district and each senatorial district is entitled to one senator."

Therefore, while excessive capitalization is a relatively harmless practice, it serves no purpose because it will not be carried into the permanent code.

The following list is suggested as a guide for capitalization:

(1) Capitalize the first word in a sentence. The first words in tabulated items following a colon may also be capitalized.

(2) Capitalize months and days of the week.

(3) Capitalize "Montana" in "state of Montana" but not "state." Capitalize "County" but not "city" in the name of a county or city, as "Cascade County" or "city of Butte." (The codes are not consistent on the capitalization of the word "county" when used as part of a proper name; however, it is usually not capitalized.)

(4) Capitalize names of specific persons or places, as "Bitter Root Mountains" or "Charles Marion Russell."

(5) Capitalize names of historic events, as "World War II," and holidays, as "Christmas Day."

(6) Capitalize reference to a statute compilation, as "R.C.M. 1947" or "Revised Codes of Montana, 1947," but not "the statutes" or "the codes" or "constitution." Do not capitalize the words "chapter," "article" or "section" when referring to the code or the constitution.

(7) Capitalize names of races, citizens and languages, as "the tribal councils of the respective Indian tribes."

(8) Capitalize words pertaining to Deity, as "Almighty God."

(9) Capitalize the name of a particular act, as "Securities Act of Montana."

(10) Do not capitalize official titles of state, county or municipal officers, agencies or institutions, such as "the governor," "the state highway department," "Montana state university," or "board of county commissioners." The same style is used for officers at the federal level, as "U. S. department of agriculture," or "the president."

(11) Do not capitalize words that indicate geographic location, as "northern Montana."

Punctuation

Punctuation is generally not considered part of a statute and therefore is subordinate to the text. But courts do look to punctuation to ascertain meaning if the language is unclear. So, while the draftsman must strive for clear expression through the proper use of words, he should also employ correct punctuation in order to support the words and avoid ambiguity.

Comma

If a sentence consists of two independent clauses, each with subject and predicate, use a comma before the conjunction.

EXAMPLE The commission shall report annually to the governor, and it shall cause the report to be printed for public distribution.

If the second part of a sentence has no subject, a comma is unnecessary unless required for clarity.

EXAMPLE The commission shall report annually to the governor and shall cause the report to be printed for public distribution.

Enclose a parenthetical phrase or clause with two commas.

EXAMPLE The report, which must be approved by a majority of the commission members, shall be sent to the governor before July 1 of each year.

Words, phrases, or clauses in a series are separated by commas.

EXAMPLE The enumeration in this constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people.

The use of the comma before the conjunction connecting the last two members of a series is preferable, but the comma may be omitted unless required for clarity.

Semicolon

Use the semicolon between two main clauses not joined by one of the simple co-ordinating conjunctions (and, but, or, nor, for).

EXAMPLE Letters and other private communications in writing belong to the person to whom they are addressed and delivered; they cannot be published against the will of a writer.

Also use the semicolon to separate two or more co-ordinate elements, one or both of which contain commas.

EXAMPLE Letters and other private communications in writing belong to the person to whom they are addressed and delivered; but they cannot be published against the will of a writer, except by authority of law.

The presence of the co-ordinating conjunction "but" in the second example would permit the use of a comma to separate the two main clauses, were there no comma in the second clause.

Colon

A colon is used most often in legislative drafting to introduce a series, usually in tabular form.

EXAMPLE Every policy shall specify:

(1) The names of the parties to the contract.

(2) The subject of the insurance.

(3) The risks insured against.

A less common use of the colon is to introduce a series not in tabular form.

EXAMPLE The powers of the government of this state are divided into three distinct departments: the legislative, executive, and judicial.

A colon may also be used to introduce a long quotation. (See first example under "Quotation marks," below.)

Parentheses

Use commas in preference to parentheses when possible. However, occasionally parentheses will serve to clarify the meaning of a sentence.

EXAMPLE Two or more counties may apply for funds for construction (and operation and maintenance when permitted) under this act.

Quotation Marks

Periods and commas are placed inside quotation marks, as a general rule. Other punctuation marks normally go outside the quotation marks, unless they are part of the matter quoted.

Do not overuse quotation marks. In legislative drafting quotation marks are usually used only (1) to enclose titles or texts of acts or laws referred to or incorporated by reference, or (2) to enclose defined words or phrases.

EXAMPLE The state of Montana hereby accepts and assents to the terms and provisions of the act of Congress, approved May 8, 1914, entitled: "An Act to Provide for Co-operative Agricultural Extension Work Between the Agricultural Colleges in the Several States."

EXAMPLE In the construction of this act the words "game" and "game birds" or parts of the same, mean the game animals and game birds, the killing of which is restricted or forbidden by the laws of Montana; and the words "mer-

chant," "hotel and restaurant keeper," include every manager, servant, agent, and employer of such person.

Abbreviation

Abbreviations are seldom used in legislative writing and should be avoided, except in two instances. Revised Codes of Montana, 1947 may be abbreviated to R.C.M. 1947; 1 p.m. is preferred to one o'clock P.M.

Numbers, Dates, Time and Age

Numbers should be expressed in words, followed immediately by figures in parentheses.

EXAMPLE The membership of the house of representatives shall be apportioned on the ratio of one (1) representative from each county for each seven thousand (7,000) persons in the county.

Monetary sums and percentages should be expressed as follows:

ten cents ($.10)
ten dollars ($10)—not ($10.00)
one hundred and fifteen dollars ($115)
ten dollars and twenty-five cents ($10.25)
twenty thousand dollars ($20,000)
five million dollars ($5,000,000)
five milion, five hundred thousand dollars ($5,500,000)
fifty per cent (50%)

Dates should be expressed as follows:

December 31 (not December 31st or 31st day of December)

July 12 (not July 12th)
December 31, 1961
December, 1961
October, November, and December, 1961.

Dates used to indicate a period of time may be expressed as follows: "For the period beginning July 1, 1961 and ending June 30, 1963," or "After June 30, 1961," or "effective July 1, 1961."

"From July 1, 1961," "after July 1," or "between July 1 and" might be construed to mean a beginning date of July 2, and should be avoided.

Another acceptable expression for a period of time that begins July 1, 1961 and ends June 30, 1963 is "After June 30, 1961 and before July 1, 1963. . ." There can be no mistake, when this style is used, that July 1, 1961 is the first effective date and that June 30, 1963 is the expiration date.

It is better to refer to a day rather than to the time an event will occur, as "ninety (90) days after the day on which judgment is entered" not "ninety (90) days after the time. . ." Usually, a period is measured in whole days, not the time of day.

Time should be expressed as follows:

12 noon
12 midnight
9 a.m. (not 9:00 a.m. or 9:00 o'clock a.m.)
1 p.m.
1:30 p.m.

Age should be expressed as follows:

"A person who is twenty-one (21) years of age or older" (not "over twenty-one (21) years of age").

"A person who is under twenty-one (21) years of age" or "who has not yet reached his 21st birthday."

"A person who is twenty-one (21) years of age or older and under sixty-six (66) years of age" (not "between the ages of twenty-one (21) and sixty-five (65)").

PROVISOS, CASE, CONDITION, AND EXCEPTION

Provisos

Provisos are clauses introduced by "provided, however," "provided, that," provided, further," and "provided, always," and properly should be used only for introducing exceptions or qualifications to the preceding clause. In fact, they are often improperly used to introduce a new idea or a separate statement not necessarily connected with the preceding clause.

The word "provided" has been so overworked in legislative drafting that it has no definite meaning. "Little if any significance is to be given to the use of the word 'provided'."[6] It must be defined by the court before it can be interpreted. "The word 'provided,' when used in a legislative enactment, may create a condition, limitation, or exception to the act itself, or it may be used merely as a conjunction meaning 'and' or 'before,' and as to what sense the word was used must be determined from the context of the act."[7]

It is best to avoid provisos altogether. Introduce an exception or limitation with "except that," "but," or "however"—or simply start a new sentence. If there are many conditions or exceptions, they should be placed in a separate subsection or in a tabulated list at the end of the sentence.

Case and Condition

The case or condition describes the circumstances which must exist before an act becomes operative. Case is sometimes distinguished from condition, but for practical purposes case and condition may be treated as synonymous.

EXAMPLE If any executor or administrator neglects or refuses to appear and render an exhibit, after having been duly cited, an attachment may issue against him.

EXAMPLE When the deeds or conveyances have been properly recorded, the record is evidence in all courts, and has the same effect as the original.

If the circumstances under which the rule is to apply can be stated briefly and simply, they should precede the rule itself. However, if the circumstances in which the rule is to apply involve numerous contingencies or conditions, the general rule should be stated first and the conditions listed in tabular form.

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[6] **State v. Bruce,** 104 Mont. 500, 515.
[7] **State v. Bruce,** 104 Mont. 500, 516.

The Exception

The exception is used to exempt something from the application of the law and should be precisely stated in order to describe only those persons or things intended to be excepted. The direct statement should include all persons and things to be covered by the rule; if there is a simple exception to the rule, place the exception at the end of the rule.

EXAMPLE This act applies to all persons except those sixty-five (65) years of age or older.

If there are several exceptions, tabulate them immediately after the rule.

EXAMPLE This act applies to all persons except:

(1) Persons sixty-five (65) years of age or older.

(2) Persons who have resided in the state for less than one (1) year.

(3) Persons who . . . etc.

Or, the exception may be placed in a separate subsection and incorporated by reference into the subsection stating the rule.

EXAMPLE (1) Except as provided in subsection (2) of this section, the board may . . . etc.

(2) This act does not apply to . . . etc.

WORD CHOICE

The objective in legislative drafting is to make the final product as precise and understandable as possible. There are hundreds of expressions, legal and otherwise, that can be simplified. In general,

Never use a long word where a short one will do.

If it is possible to cut a word out and preserve the desired meaning, always cut it out.

Never use a foreign phrase, a scientific word, or a jargon word if you can think of an everyday English equivalent.

To avoid confusion, the draftsman must also be consistent in his use of words. For instance, if he uses "employee" in one section, he should not use "worker" in another section merely for the sake of variety, nor should he use the same word to denote different things.

The left-hand column of the following list includes some words and phrases that should be avoided, unless there are special reasons to the contrary. Some are flowery, some are archaic and some are vague; all lack the precision needed for clear expression. The words in the right-hand column are those which the average reader understands more readily.

Avoid	*Use*
aforesaid, afore-mentioned, before-mentioned	"the," "that," or "those"
said	"the," "that," or "those"
same	"it," "he," or "him"
party	person (unless referring to party to a suit or action)
and/or	"either X or Y or both of them" or "X and Y or either of them"
wheresoever	wherever
whosoever	whoever
whatsoever	whatever
whomsoever	(Archaic; improper)
whensoever	"when" or "if"
none whatever	"none" or "no"
to wit	(This is verbiage. Delete it or use "namely")

Avoid	*Use*
provided, further; provided, however; provided that	"except," "but" or "however" or start a new sentence
provided (conjunction)	"if" or "but"
hereinafter, hereinbefore, hereinabove, above, below, following, preceding	(These are objectionable when referring to the position of a section, or other statutory provision. If reference is necessary, specify the chapter, or paragraph, section or subsection by number.)
every person, all persons	a person
null and void	void
absolutely null and void and of no effect	void
it is his duty to	shall
is required to	shall
is directed to	shall
is hereby authorized and it shall be his duty to	shall
is hereby vested with power and authority and it shall be his duty in carrying out the provisions of this Act to	shall
it is lawful to	may
is empowered to	may
is authorized to	may
is hereby authorized to	may
is entitled to	may
shall have the power to	may

Avoid	*Use*
fail, refuse or neglect	fail
is able to	can
is unable to	cannot
effectuate	carry out
be and the same is hereby	is
is defined and shall be construed to mean	means
prosecute its business	carry on its business
transmit	send
terminate	end
cease	stop
is binding upon	binds
institute	"begin" or "start"
modify	change
inquire	ask
inform	tell
utilize (meaning to use)	use
employ (meaning to use)	use
constitute and appoint	appoint
is applicable	applies
necessitate	require
expend	spend
afforded or accorded	given
occasion (verb)	cause
deem	consider
render (meaning "to give")	give
formulate	make

Avoid	*Use*
means and includes	"means" or "includes" as required
does not operate to	does not
bring an action	sue
prior to	before
not later than	before
subsequent to	after
on or after	after
from and after	after
at such time as	when
during such time as	while
until such time as	until
unless and until	"unless" or "until" as required
during the course of	during
for the duration of	during
period of time	"period" or "time" as required
forthwith	immediately
examine witnesses and hear testimony	take testimony
attempt (verb)	try
endeavor (verb)	try
obtain	get
retain	keep
preserve	keep
possess	have
ordered, adjudged and decreed	adjudged

Avoid	*Use*
in cases in which	"when" or "where"
in case	if
in the event that	if
per annum	a year
per day	a day
per foot	a foot
provision of law	law
pursuant to	under
under the provisions of	under
feasible	possible
in order to	to
for the reason that	because
in lieu of	instead of
each and all	(either word)
each and every	(either word)
any and all	(either word)
sole and exclusive	exclusive
full force and effect	"force" or "effect"
evidence, documentary or otherwise	evidence
bonds, notes, checks, drafts and other evidences of indebtedness	evidences of indebtedness
the place of his abode	his abode
law passed	law enacted
matter transmitted through the mail	mail
member of a partnership	partner

Avoid	*Use*
attorney and counselor at law	attorney
full and complete	full
person of suitable age and discretion	adult (or state age)
hereafter	after this Act takes effect
give consideration to	consider
give recognition to	recognize
make application	apply
make payment	pay
make provision for	provide for
is dependent on	depends on
have knowledge of	know
have need of	need
at the time of his death	when he dies
or, in the alternative	or
maximum	most
minimum	least
interrogate	question
evince	show
consequence	result
expedite	hasten, speed up
in sections 1000 to 1050, inclusive	in sections 1000-1050
purchase	buy
portion	part
of a technical nature	technical
enter into a contract with	contract with

Chapter III

THE BILL AND ITS PARTS

The bill is the form of legislation most used in Montana, because the Constitution requires in article V, section 19, that "no law shall be passed except by bill."

A bill is used:

(1) To create new law in an area not covered by present statutes.

(2) To amend an existing statute.

(3) To repeal an existing statute.

(4) To do a combination of (1), (2) or (3) in the same bill.

(5) To propose an amendment to the Montana constitution.

(6) To appropriate money.

Since clarity of expression is dependent on clarity of both thought and construction, many tentative outlines may be necessary in order to get an orderly, logical and understandable draft of the bill. Once the context is arranged and organized, a definite plan can be developed.

A suggested arrangement of bill provisions is listed below, but of course this arrangement is not mandatory. Each part should constitute a separate section of the bill. The parts designated by one asterisk are vital provisions in some bills, but unnecessary in other bills. Those designated by the double asterisk are always optional. Each part is discussed in detail following the list.

I. Key to amended and repealed sections

II. Title

III. Preamble**

IV. Enacting clause

V. Body

1. Short title**
2. Declaration of purpose**
3. Definitions*
4. Basic provisions
5. Penalties*
6. Saving clause*
7. Appropriations*
8. Severability clause*
9. Repealing section*
10. Effective date*

Key to Amended and Repealed Sections

The 1961 Legislative Assembly amended joint rule No. 9 to require that "Any bill, amending or repealing existing statutes, introduced shall, below the line on which the bill's authorship is indicated, and before the title of the bill, provide a key in letters and numerals showing the section or sections, of the Revised Codes of Montana, 1947, and all amendments or repeals thereto." The purpose of the key is to provide the necessary information to make possible the electronic preparation of a list showing if more than one bill affects the same statute.

S.J.R. No. 9, which directs the state board of equalization to supply a daily cumulative listing of all bills and the statutes they amend or repeal, seems to require more elaborate information than would be provided by the key required by Joint Rule No. 9. The rule itself requires that only the section numbers of amended or repealed statutes be listed. A suggested form for the key is included in the sample bill in Appendix A.

Title

The purpose of a title is to identify the bill and to give a general indication of its subject. Bill titles are discussed at length in Chapter IV.

Enacting Clause

Each bill must have this enacting clause:

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA.

The form is prescribed in article V, section 20 of the Montana constitution, and there can be no deviation from it.[1] The enacting clause follows the title of the bill, unless a preamble is used.

Basic Provisions

A bill which only amends or repeals existing laws may not present any organizational problem. An act that creates a new body of law, however, should be thoughtfully organized. The first step in the actual drafting of a new act should be to identify the main purpose or principle. If possible, this principle should be stated concisely at the beginning of the act, either in one section or in two or more consecutive sections.

Since the length and complexity of bills varies greatly, no set pattern can be prescribed for all bills. However, from the standpoint of organization, there are three types of new acts.

1. Acts which have a main provision supported by subordinate provisions.
2. Acts which contain several related main provisions, some of which have subordinate provisions.
3. Acts which consist of a series of related and equal provisions all dealing with one subject.

Most new legislation which does not revise existing law is concerned with a single leading principle and falls naturally into the first type. Generaly speaking, the main principle of an act will be followed by the authority by which it is to be administered and the means by which it is to be made effective.

(1) The leading principle or main purpose of the act.

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[1] **Vaughn & Ragsdale v. State Board,** 109 Mont. 52.

(2) Administration
    (a) Administrative authority
    (b) Administrative procedure

(3) Miscellaneous provisions.

Where the terms employed in an act require explanation, definitions may properly precede the statement of the leading principle.

Thus, an act regulating the practice of optometry has for its "core" the provision that it is unlawful to practice optometry without a license. An examining board is the authority by which it is to be administered; and the provisions for examinations of applicants, for the issuance, refusal, revocation and renewal of licenses and for the payment of fees are the administrative details.

Acts of the second type are similar to those of the first type except that there are several main enactments instead of one. These acts should be divided into the several main divisions, each with its leading principle. Each main division with its subordinate divisions should be separated from the other main divisions and worked out in detail as if it constituted the entire bill.

The third class of act, one that is composed of equal provisions relating to a common subject, must be governed by different principles. Sometimes there is a natural sequence of steps which suggests a logical order for the provisions. Thus, an act regulating procedural matters might proceed in the customary order of litigation —commencing with service and ending in appeals. If there is not a natural sequence in the provisions an arbitrary order must be adopted.

OTHER PARTS SOMETIMES NEEDED

In order to amplify and give effect to the basic provisions of a bill it is sometimes necessary to include other provisions.

Some standard optional provisions are discussed below.

Effective Date

Section 43-507, R.C.M. 1947 provides that "Every statute, unless a different time is prescribed therein, takes effect on the first day of July of the year of its passage and approval."

Therefore, an effective date should not be included in the bill unless the sponsor wants the bill to become effective before July 1, or wishes to delay the effective date until some day following July 1. If an effective date is necessary, it is usually set out in a separate section.

EXAMPLE Section 10. This act is effective December 15, 1961.

EXAMPLE Section 10. This act is effective on its passage and approval.

The latter example means that the act becomes effective when signed by the governor.

Unless an emergency necessitates an effective date before July 1, or unless there is good reason for delaying the effective date until after July 1, an effective date should definitely not be included in the bill. An effective date before July 1 may deprive lawyers, administrators and the public generally of the opportunity for notice of the enactment of a new statute, and may not allow sufficient time to prepare for new administrative procedures.

Penalty Provisions

If a violation of an act is to result in a penalty, a section should be devoted to setting forth the penalty.

EXAMPLE Section 8. A person who violates this act is guilty of a felony and upon conviction is punishable for not less than one (1) year nor more than seven (7) years in the state prison.

Repealing Section

It may be necessary to repeal one or more statutes that conflict with the new act. Don't rely on a general repealing clause. Identify each statute to be repealed.

EXAMPLE Section 9. Sections 10-1001 and 89-402, R.C.M. 1947 are repealed.

The repealing section is usually the last section of a bill, unless there is a section specifying an effective date. See Chapter V for a more complete discussion of repeals and repealing acts.

Saving Clause

Because it is normally presumed that changes in the law are in full force from the effective date of enactment, newly enacted laws could often disrupt transactions already in progress. The saving clause preserves rights and duties that have already matured or proceedings that have already been begun.

EXAMPLE Section 11. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

If a criminal statute is repealed, unless the act itself contains language to the contrary, section 43-514, R.C.M. 1947 would control. That section provides that the repeal of an act creating a crime does not bar the indictment or information and punishment of an act already committed in violation of the law repealed.

Appropriation Section

If the administration of a law requires a special sum of money that will not be provided in a general appropriation bill, an appropriation should be included.

EXAMPLE Section 12. S e v e n t y-f i v e thousand dollars ($75,000) is appropriated from the general fund for the purpose of paying salaries, administrative expenses and other costs necessary to carry out provisions of this act during the biennium starting July 1, 1961.

Article V, section 33 of the Montana constitution provides, "The general appropriation bills shall embrace nothing but appropriations for the ordinary expenses of the legislative, executive and judicial departments of the state, interest on the public debt and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject." However, where an appropriation is a mere incident to a larger, but single subject of legislation, such as the creation of a state agency, it need not be made by separate bill.[2]

Severability Clause

A statute may be found by a court to be unconstitutional or invalid in part. The question before the court often will be whether the entire act must fall with the invalid portion. In deciding whether the invalid portion is severable, the court must determine legislative intent. To help the court decide the question, the legislature often includes a "severability clause" to the effect that the valid provisions stand even after the invalid ones have fallen. Such a clause is simply a declaration of legislative intent. In early Montana cases, the supreme court applied the rule that "If it is possible to eliminate the invalid portion, without destroying the entire statute, it must be done,"[3] (apparently without regard to the existence or non-existence of a severability clause.)

However, a later decision altered this early rule. "In the absence of a [severability clause] the presumption is against the mutilation of a statute, and that the legislature would not have enacted it except in its entirety. The incorporation of a [severability clause] creates a presumption to the contrary; namely, that the legislature would have enacted the law without its invalid portion being incorporated therein."[4]

A recent decision indicates that the Montana court affirms the rule that the inclusion of a severability clause

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[2] **Hill v. Rae,** 52 Mont. 378, 388.

[3] **State ex rel Esgar v. District Court,** 56 Mont. 464, 468.

[4] **State v. Holmes,** 100 Mont. 256, 291.

creates a presumption. ". . . where a statute contains a savings [sic] clause it is presumed that the valid portions would have been enacted without the invalid portion."[5]

A severability clause should not be included, of course, unless some portions of the bill are severable in fact. Where a severability clause seems appropriate, the following form is suggested.

EXAMPLE Section 11. It is the intent of the legislative assembly that if a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

OPTIONAL PARTS OF A BILL

Depending upon the nature of the bill, some or all of the provisions discussed below may be desirable. They are, however, always optional and only serve to clarify the intent of the legislature.

Preamble

The preamble follows the title and precedes the enacting clause of the bill. It is rarely used and does not become a part of the law. It is a preliminary statement of the reasons for the enactment of the law. The preamble starts with the word, "Whereas."

Short Title

The short title, which follows the enacting clause, is not suitable for all enactments. However, when an act creates new law in a definable area, the short title will enable quick future identification. Short titles are often used to identify uniform state laws.

EXAMPLE Section 1. This act may be cited as the "Securities Act of Montana."

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[5] **Bacus v. Lake County**, 354 P2 1056, 1063. In this 1960 decision, the court incorrectly refers to the severability clause as a "savings clause."

Declaration of Purpose

If it is desirable to express the policy or purpose of an act, the "declaration of purpose" is preferred to the preamble in a bill. The declaration is a section of the bill and becomes part of the law. It follows the enacting clause or short title.

EXAMPLE Section 1. It is the purpose of this act to protect the health and safety of the people of Montana from the menace of drug addiction. The legislative assembly intends that the criminal laws shall be enforced against drug users as well as other persons. This act shall not be construed as intending to substitute treatment for punishment where crimes are committed by drug users.

Definitions

To avoid repetition of words and to assure clarity, a well-drafted bill often contains a section on definitions. Definitions usually precede the main provisions of the bill. They are of definite advantage in these situations:

(1) To define a general term in order to avoid its frequent repetition, such as, " 'Employee deductions' means all authorized deductions made from the salary and wages of an officer or employee of a state agency."

(2) To avoid repeating the full title of an officer or agency, such as, " 'Director' means the director of the department of welfare and health."

(3) To give an exact meaning to a word that has several dictionary meanings.

(4) To define a technical word that has no popular meaning in commonly understood language.

(5) To limit the meaning of a term that, if not defined, would have a broader meaning than intended.

Definitions are perhaps not included in bills as often as they should be. In devising definitions the drafter is forced to clarify his own thinking as to the exact meaning of key words in the bill—something he otherwise might not do.

Certain words are defined by statute in section 19-103, R.C.M. 1947. If a word is used in the same sense that it is defined in section 19-103 it is unnecessary to define it in the bill.

Nonseverability Clause

The nonseverability clause, which is rarely used, is included in a bill if the sponsor wants the entire act to be declared invalid if any part of it is held unconstitutional.

EXAMPLE Section 8. It is the intent of the legislaitve assembly that each part of this act is essentially dependent upon every other part, and if one part is held unconstitutional or invalid, all other parts are invalid.

CONSTRUCTION AND NUMBERING OF SECTIONS, SUBSECTIONS, AND PARAGRAPHS

The division of a complex or lengthy paragraph into separate sections or subsections, often will facilitate interpretation of the law. It is generally easier to follow a complicated idea if it is broken down into its component parts.

Many styles have been used for numbering and designating sections, subsections and paragraphs of the Montana code. The style of numbering is optional with the draftsman; there is not necessarily any "right" or "wrong" method. The following suggestions are included in this manual for attorneys who wish to use them as guides.

Sections

The subject of a bill may be narrow or wide in scope. As a result, some bills have only one section, while others have many sections. How much should go into each section? The best guide is to have each section relate to a single idea. When a different thought is to be expressed, it should go into another section.

In general, a section should contain no more than would be found in a paragraph. Short sections facilitate research and future amendment of the law. The amend-

ment of a long section is a lengthy and expensive process, and the chance for error is much greater than with a short section.

All sections are numbered consecutively starting with 1. When a new section (one not amending an existing statute) is codified, a code number will replace the number assigned by the drafter. Occasionally the draftsman may wish to assign code numbers to a new section. This may be done to insure that the law will be placed in a certain location in the codes, and may be desirable when the new act supplements specific existing statutes. While the chance of passing separate bills in which draftsmen assigned identical new code section numbers is remote, the possibility can be avoided by leaving the assignment of code section numbers to the codifiers, as a general practice. (If two bills containing identical code numbers *are* passed, the codifier will assign distinguishing letter suffixes to the sections.)

A section amending an existing statute is numbered in the same manner as a new section is. However, the code number of the statute which is amended is also included; it is placed inside quotation marks with the rest of the statute.

Subsections

Dividing a section into two or more parts or subsections will often clarify the law. The Montana Insurance Code contains many excellent examples of subsections.

EXAMPLE Section 1. (1) There is created an insurance department of this state, which shall be located in or convenient to the office occupied by the state auditor.

(2) The insurance department shall be under the control and supervision of the commissioner.

(3) Funds adequate for the maintenance and operation of the insurance department shall be expressly appropriated by the legislative assembly.

Each of the subsections is a primary paragraph, and each is designated with an Arabic numeral in parentheses.

Tabulations

It is occasionally desirable to further divide a section or subsection into secondary paragraphs or tabulations.

EXAMPLE Section 5. (1) Orders and notices of the commissioner shall not be effective unless in writing signed by him or by his authority.

(2) Every such order shall state its effective date and shall concisely state:

(a) Its intent or purpose.

(b) The grounds on which based.

(c) The provisions of this code pursuant to which action is so taken or proposed to be taken.

In the example above, the small letters (a) (b) and (c) designate secondary paragraphs. If another tabulation occurs under a secondary paragraph, small Roman numerals (i), (ii) should be employed.

If a section is not divided into subsections, but contains some tabulated material, the main paragraph will not be numbered and the secondary paragraphs in the tabulation may be designated with Arabic numerals.

EXAMPLE Section 8. An insurer which otherwise qualifies therefor may be authorized to transact any one kind or combination of kinds of insurance as defined in chapter 29 of this title, except:

(1) A life insurer may also grant annuities, but shall not be authorized to transact any other kind of insurance other than disability.

(2) A reciprocal insurer shall not transact life insurance.

(3) A title insurer shall be a stock insurer.

Avoid the use of numbers or letters in the body of a paragraph; separate the divisions into paragraphs and place the number or letter at the beginning of the paragraph.

Chapter IV
BILL TITLES

Bill titles have been used to caption legislation since the fifteenth century in England. At first bill titles were of little importance but gradually they came to be regarded as descriptive of the purpose of the legislation. As a result of widespread abuses through the use of deliberately deceptive titles in early American legislatures, thirty-nine states now provide that a bill may cover only one subject which must be expressed in its title.

Section 23, article V of the Montana constitution provides "No bill, except general appropriation bills, and bills for the codification and general revision of the laws, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed."

The main purpose of the provision is to insure the titling of legislative acts in a manner that will give reasonable notice of the content to legislators and the public. It also prevents "omnibus" or multi-subject legislation from being passed by the combined votes of the advocates of each separate measure, when no single measure would have been passed on its own merits. Moreover, it prohibits the practice of attaching undesirable "riders" to popular or desirable bills.

This requirement is one of the few general constitutional requirements relating to the form of bills; compliance with it is mandatory. The provision has proven to be a fertile area for lawsuits instituted by persons wishing to overthrow legislative enactments. There are over fifty supreme court decisions annotated in the constitution under this section.

The court has laid down a number of guides to the requirements of this provision; however, the declaration of a set of rules is easier than their application. The Montana supreme court accurately appraised the difficulty of

applying such general rules. "The question of the sufficiency of the title of various acts of the legislature has been before this court many times. Each case has been decided on its own particular set of facts. This must of necessity be the case . . . . No single rule can be laid down which will control all cases where this attack is made."[1]

While all the provisions of the constitution are "mandatory and prohibitory," the courts, bearing in mind that the legislature is a coordinate branch of the government, and that its action, if fair, should be sustained, have traditionally given this section a liberal construction, so as to not interfere with or impede proper legislative functions. The legislature is the judge, to a great extent, of the title which it will prefix to a bill; and the court will not hold a title void because, in its opinion, a better one might have been used.[2] The object of the provision is not to embarrass honest legislation.[3] The function of the judiciary is to give effect to the legal acts of the legislature, not to supervise them.[4] The objection must be grave and the conflict between the statute and the constitution palpable, before the judiciary will disregard a legislative enactment upon the sole ground that it embraced more than one object, or, if but one object, that it was not sufficiently expressed by the title.[5] Sound policy and legislative convenience dictate a liberal construction of the title and subject-matter of statutes to maintain their validity. Infraction of this constitutional clause must be plain and obvious to be recognized as fatal.[6]

The constitutional provision on titles actually has two component parts which are not always clearly distinguished by the court. The provision limits legislation to a single subject and it requires that this subject be indicated in the title. In consequence a statute may be attacked on either one or both of these grounds. These two facets of the constitutional requirement are discussed separately below.

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[1] **Barbour v. State Board of Education,** 92 Mont. 321, 326.
[2] **State v. McKinney,** 29 Mont. 375, 381.
[3] **State v. Ross,** 38 Mont. 319, 322.
[4] **Myrick v. Peet,** 56, Mont. 13, 22.
[5] **Evers v. Hudson,** 36 Mont. 135, 143.
[6] **Rosebud County v. Flinn et al,** 109 Mont. 537, 544.

UNITY OF SUBJECT

Although it is not always easy to distinguish between the two parts of the constitutional requirement in reviewing Montana supreme court cases, apparently in only about twelve cases was legislation attacked as containing more than one subject. The remaining cases interpreting the requirement deal with the problem of clear expression of the subject, or an indistinguishable mixture of both requirements.

In a leading Montana decision[7] on unity of subject, the court stated the following rule which generally has been adhered to in later Montana decisions: "The object of the constitutional provision . . . is not to embarrass honest legislation, but to prevent the vicious practice, which prevailed in states which did not have such inhibitions, of joining in one act incongruous and unrelated matters. The rule of interpretation now quite generally adopted is that, if all parts of the statute have a natural connection and can reasonably be said to relate, directly or indirectly, to one general and legitimate subject of legislation, the act is not open to the charge that it violates this constitutional provision; and this is true no matter how extensively or minutely it deals with the details looking to the accomplishment of the main legislative purpose. Or, stating the converse of the proposition, it may be said that if, after giving the act the benefit of all reasonable doubts, it is apparent that two or more independent and incongruous subjects are embraced in its provisions, the act will be held to transgress the constitutional provision."

The Montana court has repeatedly held that the unity required by this section is served notwithstanding the existence of many provisions in an act, where such provisions are germane to the general subject expressed.[8]

"The question of unity of subject must be determined, not from the title, but from an inspection of the body of the act, and if that be found to embrace but one subject, the fact that the title expresses more than one does not render the act objectionable *on the ground of plurality;*

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[7] **Evers v. Hudson,** 36 Mont. 135, 145.
[8] **State ex rel Hay v. Alderson,** 49 Mont. 387, 405.

the subject not contained in the act being treated as surplusage."[9] (Emphasis supplied) It should be pointed out that, while surplus material in the title may not render an act objectionable on the ground of plurality, it might result in a title that failed to clearly express the subject of the bill.

The Montana court has never overthrown a legislative enactment because of plurality of subject matter, although this question has been before it many times. Cases holding legislation invalid under section 23 of article V involved, in some degree, the question of the adequacy of the title. Several cases in which the court refused to vitiate legislation on the ground that it encompassed more than one subject are discussed below.

When the court was asked to rule invalid a city ordinance on the ground that it contained more than one subject and was therefore repugnant to section 3265 of the codes (11-1102 R.C.M. 1947), it said that the prohibition in this section imposes the same restriction on city councils as is imposed on the legislature by section 23, article V. The ordinance in question provided that a special election be held to confer authority on the city council to increase the indebtedness of the city by the issuance of (1) bonds for the purpose of securing a water supply from a nearby creek and constructing a water system for the city, the revenue from the system to pay for the indebtedness, and, (2) sewer bonds for the purpose of connecting one sewer system with the sewer farm on another addition. The court said the general subject of the ordinance is the incurring of the indebtedness by the city. "The different purposes named as making this necessary are matters of detail for the information of the taxpayers. The ordinance is not objectionable for the reason urged."[10]

In a later case the court was asked to declare an initiative invalid. This law provided that the rate of taxation on real and personal property for state purposes for each of ten years beginning with 1921 should be increased 1½ mills on each dollar of valuation and all money derived from the levy should be appropriated by the legislature

[9] **State v. Ross,** 38 Mont. 319, 323.

[10] **Carlson v. City of Helena,** 39 Mont. 82, 108.

for the support of the university system. The state alleged that the act was intended to do three things: First, increase the rate of taxation, secondly, authorize the legislature to levy annually not to exceed 3½ mills, third, to appropriate the proceeds of part of the levy for the university system. The court said the chief thought was that of increasing the rate of taxation which was the object and subject matter of the enactment, and as a detail germane to the subject, the people authorized the legislature to do two things—first, to levy 3½ mills annually during the period named, and second, to appropriate annually the proceeds from 1½ mills of such levy. The court concluded that no violation of section 23, article V, occurred.[11]

General Appropriation Bills and Bills For The Codification and General Revision of The Law

There are two express exceptions to the constitutional provision—general appropriation bills and bills for the codification and general revision of the laws. "The obvious reason for the exception of appropriation bills and bills for the codification and general revision of the laws is that the first are necessary for the maintenance of the government, and hence their validity ought not to be open to question for informality; and the latter are so extraordinary in their character that both the members of the legislative body and the public are presumed to know what is being done. Furthermore, it would be impracticable to formulate a title which would cover every subject embraced in such a bill."[12]

In order to fall within the exception, an appropriation bill must be a general appropriation bill, that is, it may embrace nothing but appropriations for the "ordinary expenses of the legislative, executive and judicial departments of the state, interest on the public debt and for public schools."[13] Further, the incidental provisions of an appropriation bill must be germane to the appropriation if it is to fall within the exception. The Montana

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[11] **State v. Erickson**, 75 Mont. 429, 440.

[12] **State v. District Court**, 49 Mont. 146, 151.

[13] **Constitution of Montana**, Art. V, Sec. 33. See cases annotated under this section for discussion of "ordinary expenses."

court has held that provisions relating to the expenditure of the money appropriated, or its accounting, may be included in an appropriation bill without being mentioned in the title, even when the provisions had the effect of amending or repealing general statutes.[14]

On a few occasions the Montana court has considered titles to acts codifying and generally revising the laws. An act to codify and revise the general laws governing municipal corporations, the title of which omitted reference to a specific section of the law which the bill amended, was attacked as having more than one subject. The court said: "The title of this [bill] attempts elaborately to designate numerous sections of the political code pertaining to municipal corporations . . . So far as its title was concerned, it would have been amply sufficient to have designated therein that it was an act to revise the laws pertaining to municipal corporations. Manifestly, the fact that there was no reference in the title to section 3466 was due to a mere clerical oversight. The intention of the legislature is clear. Its purpose in enacting House Bill No. 291 was manifestly to harmonize and revise generally sections in the political code and in the act of 1893 pertaining to municipal corporations." The court upheld the act.[15]

An act repealing over fifty sections of the law entitled: "AN ACT TO PROVIDE FOR THE ORGANIZATION, REGULATION AND INSPECTION OF BUILDING AND LOAN ASSOCIATIONS AND TO REPEAL SECTIONS [770 to 845] OF THE CIVIL CODE OF MONTANA" was attacked as being repugnant to the constitution. The court said: "The act is a general revision of the laws relating to the one subject embraced therein. . ."[16]

An act entitled: "AN ACT TO AMEND SECTIONS 90, 95, 110 AND 112 OF THE CIVIL CODE OF THE STATE OF MONTANA" consisted of two sections. The first reenacted sections 90, 95, and 112 as amended; the second provided for the repeal of section 91. The title was attacked because section 91 was not mentioned in the title

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[14] State v. Ford, 115 Mont. 165, 171.

[15] Application of James Ryan, 20 Mont. 64, 66.

[16] Home Building and Loan Association v. Nolan, 21 Mont. 205, 214.

and section 110 was not mentioned in the body of the bill. The court said that a bill whose plain purpose was to revise the laws on a particular subject found in any of the codes is within the exception as well as an omnibus revision bill covering all of the codes or any one of them. The court concluded that because the bill was introduced as a part of a general plan of codification and revision of all the laws of the state, it should be classed under the head of revisionary legislation on the subject of divorce and should fall within the exception of the constitution.[17]

CLEAR EXPRESSION OF SUBJECT IN THE TITLE

By this constitutional notice it is only intended that the general subject of the bill shall be thoroughly expressed in the title. It is not necessary—for the constitution has not so declared—that a title shall embody the exact limitations or qualifications contained in the bill itself which are germane to the purpose of the legislature, if the general subject of the measure is clearly expressed in the title. Where the degree of particularity necessary to be expressed in the title of a bill is not indicated by the constitution itself, the courts will not embarrass legislation by technical interpretations based upon mere form or phraseology.[18]

In the leading and often cited case of *State v. McKinney,*[19] the Montana court reiterated the importance of a liberal construction of this provision. "Every reasonable presumption should be in favor of the title, which should be more liberally construed than the body of the law, giving to the general words in such title paramount weight. It is not essential that the best or even an accurate title be employed, if it be suggestive in any sense of the legislative purpose. The remedy to be secured, and mischief avoided, is the best test of a sufficient title, which is to prevent it from being made a cloak or artifice to distract attention from the substance of the act itself . . . No better test . . . can be made than by a correct answer to the question: Is this title in every respect *so foreign to the purpose of the act, or some integral part of it,* that it gives no intimation thereof?"

[17] **State v. District Court,** 49 Mont. 146, 150.
[18] **State v. Anaconda Copper Mining Company,** 23 Mont. 498, 501.
[19] 29 Mont. 375, 386.

In the McKinney decision the court also endorsed an exceedingly liberal standard that seems to require "evidence of fraud" before an act can be invalidated. The court applied the rule that the act must be "entirely foreign to the object expressed in the title; thus furnishing the evidence of such a fraud in securing its enactment that the law would never have received the sanction of the legislature, had the members known the contents of the act."

While the Montana court may not have always applied the "evidence of fraud" standard, it has consistently held that if the title fairly indicates the general subject of the act, is comprehensive enough in its scope reasonably to cover all of the provisions thereof, and is not calculated to mislead either the legislature or the public, it must be held to be sufficient to meet the requirements of the constitution.[20]

Details Germane To The Subject Need Not Be Mentioned

The title is generally sufficient, if the body of the act treats only, directly or indirectly, the subjects mentioned in the title and other subjects germane to those mentioned in the title, or matters in furtherance of or necessary to accomplish the general objects of the bill mentioned in the title. *Details need not be mentioned. The title need not contain a complete list of all matters covered by the act.* A title need not disclose the means and instrumentalities provided in the body of the act for accomplishing its purpose, where all the provisions are reasonably necessary to attain the object of the act indicated by the subject expressed in the title.[21]

For example, the court has consistently held that where the intent is to regulate a particular business by law and to put a statute regulating it into effective and practical operation, and punishments are prescribed and imposed on those who violate its command, such penalties need not be included in the title if they are but the ends and means necessary or convenient for the accomplish-

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[20] **Lewis & Clark County v. Industrial Accident Board,** 52 Mont. 6, 11.
[21] **State ex rel Boone v. Tullock,** 72 Mont. 482, 489, 491.

ment of the general object.[22] Nor does the omission of the mention of license fees from the title of an act seeking to regulate a business or occupation render it vulnerable to the contention that the title does not clearly express subjects mentioned in the act.[23]

Many Montana supreme court decisions indicate the nature of matters "germane to the subject" which do not need to be mentioned in the title because they are "ends and means necessary or convenient for the accomplishment of the general object." The question as to what is germane to a subject is one of fact, rather than of law, and there can be no clear line of demarcation between those matters which fall within and those which fall without the inhibition of the constitutional provision.[24] While former decisions cannot be wholly determinative of the question, the reasoning employed and the analogy between decided cases can aid the draftsman in his determinations.

When an act entitled "AN ACT TO REGULATE THE SALE AND REDEMPTION OF TRANSPORTATION TICKETS OF COMMON CARRIERS" provided for certificates of the appointment of agents to sell such tickets, the issuance of a license on payment of a license fee and exhibition of this certificate, the posting of the certificate and license, and made it unlawful for any person to sell tickets without such license, and provided a penalty for violation, the court held that there was no merit in the point that the subject of the act was not clearly expressed in the title.[25]

An act under consideration in another case was entitled: "AN ACT REQUIRING RAILWAY COMPANIES TO PAY FOR DAMAGES TO STOCK." The body of the act provided that railway companies that failed to fence their tracks and to install cattle guards for the protection of the stock would be liable to the owner of any stock injured or killed. The law also required station masters to

[22] **State v. Burnheim,** 19 Mont. 512, 518. **State ex rel Boone v. Tullock,** 72 Mont. 482.

[23] **State v. McKinney,** 29 Mont. 375, 380.

[24] **State v. Driscoll,** 101 Mont. 348, 355.

[25] **State v. Bernhiem,** 19 Mont. 512, 518.

keep records and post notices of stock killed or injured, and made it a misdemeanor for an employee of a railway to haul off or destroy an animal killed or injured on a railroad without preserving all marks and brands and notifying two citizens in the neighborhood. The adequacy of the title was upheld by the court.[26]

The decision in the leading case of *State v. McKinney*[27] upheld the constitutionality of an act entitled: "AN ACT TO CREATE THE OFFICE OF MEAT AND MILK INSPECTOR FOR THE STATE OF MONTANA, AND PRESCRIBING THE POWERS AND DUTIES AND COMPENSATION THEREFOR." The body of the act contained twenty-six sections providing for the licensing of dairymen and vendors of meat, fish and poultry; the condemnation of meat unfit for human consumption; labeling requirements and butterfat content for "skimmed milk" and many other details.

But when the act under attack was entitled: "AN ACT CREATING A STATE BOARD OF HEALTH, DEFINING ITS POWERS AND DUTIES, AND PROVIDING FOR THE COMPENSATION OF ITS OFFICERS, AND PROVIDING FOR THE ENFORCEMENT OF THE RULES AND REGULATONS OF SAID BOARD" and the act included numerous provisions with reference to *county* boards of health, it was held that the provisions contained in the act relating to county boards of health, not being clearly expressed in the title, were void. During the course of the opinion the court observed, "If the act had been entitled: 'AN ACT TO PROTECT THE PUBLIC HEALTH' then it might have included local and county boards as subsidiary instrumentalities to accomplish the general purpose so declared."[28]

A one hundred and four section act entitled: "AN ACT TO LIMIT, REGULATE AND LICENSE THE MANUFACTURE AND SALE OF ANY AND ALL LIQUORS OR BEVERAGES THAT MAY HEREAFTER BE MANUFACTURED, SOLD OR DISPENSED IN THE STATE OF

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[26] **Snook v. Clark,** 20 Mont. 230.

[27] 29 Mont. 375.

[28] **Yegen v. Board of County Commissioners of Yellowstone County,** 34 Mont. 79.

MONTANA" was attacked because the title was silent on the following particulars: It made no reference to (1) a Liquor Control Board, (2) the matter of a state hiring persons to buy and sell liquor in the name of the state, (3) the leasing or establishing an operation of state liquor stores, (4) the control of an individual in his purchase or consumption of liquors by the permit system, and (5) the accrual of profits from liquor sales. The court held that all of these subjects were germane, relative and pertinent to limiting and regulating the manufacture and sale of intoxicating liquor, and upheld the constitutionality of the act.[29]

An act entitled: "AN ACT AUTHORIZING THE ISSUANCE OF BONDS OF THE STATE OF MONTANA TO REFUND CAPITOL BUILDING BONDS OF SAID STATE AND HELD BY THE STATE BOARD OF LAND COMMISSIONERS, AND PROVIDING FOR THE PAYMENT THEREOF" was attacked because the subject of a tax levy was not clearly expressed in the title. The court said: "While reference to an *ad valorem* tax levy was not expressly made in the title, the general statement was made providing for the payment of the refunding bonds. A tax levy is the usual mode of procedure by which state obligations are often discharged, and in our opinion the average legislator or citizen, wary or unwary, was sufficiently apprised of the contents of the bill by its title."[30]

What is mere detail germane to the general subject of the bill will always be a question of fact, and few specific "dos" and "don'ts" can be suggested. However, it seems safe to say that it is not necessary or desirable to include reference to general repealing clauses, effective dates or severability clauses in the title. These standard provisions are obviously no more than details in furtherance of the general purpose of the bill.

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[29] **State v. Driscoll,** 101 Mont. 348.
[30] **Lodge v. Ayers,** 108 Mont. 527, 533.

Using Language Not Appearing In Bill

It is not always enough simply to abstract the language in the law itself; sometimes it will be necessary for the drafter to go beyond the language in the act to explain its effect or purpose.

Early in 1925, after the newly created county of Petroleum had elected its officers, an action was brought to vacate the offices. It was contended that an act of the 1925 legislative assembly abolished Petroleum County. The act in question was entitled: "AN ACT TO AMEND SECTIONS 4318 AND 4327 OF THE REVISED CODES OF THE STATE OF MONTANA, 1921, RELATING TO CHANGING THE BOUNDARIES OF FERGUS AND JUDITH BASIN COUNTIES." The act amended two sections of the law to detach thirty-two sections of land from Fergus County and attach them to Judith Basin County and defined the boundaries of Fergus County as they existed in 1921. The act contains about six pages of metes and bounds description setting out the boundaries of these two counties. No place in the act is Petroleum County mentioned even though the effect of these revisions was to include the entire area of Petroleum County within the boundaries of Fergus County. The court said: "There is not a suggestion that Petroleum County was to be affected . . . indeed, Petroleum County is not mentioned in the entire act, and a person, even though he be a skilled engineer, . . . must employ a map and township plats and make a critical examination of the description . . . in order to ascertain that Petroleum County has been affected in the least." The court asked if it could reasonably be said that the title expressed clearly, or at all, a legislative purpose to abolish Petroleum County and replied "To ask the question is to answer it in the negative." The court held that so much of the act as assumed to define the boundaries of Fergus County and include Petroleum County within the boundaries of Fergus County was void.[31]

However, while it might be desirable or necessary at times to include language in the title describing the purpose of the bill which does not itself appear in the body of the bill, a drafter should be extremely careful to employ correct definitions and words. An act entited: "AN

[31] State ex rel Foot v. Burr, 73 Mont. 586

ACT TO DEFINE THE WORD 'ESTRAY' AND TO PROVIDE A PENALTY FOR THE TAKING UP, USING OR DISPOSING OF ESTRAYS UPON THE PUBLIC DOMAIN," defined "estray" as an animal "which is away from its accustomed *range*" and made it a misdemeanor to take up from the *range* any estray animal. The court distinguished between "range" and "public domain" and concluded that the definition of public domain excluded any land under private ownership. The court held: "The purpose of this statute must be determined by its title. It is not competent to use one title and explain in the body of the act something else. This court has no power to enlarge the title of this act by holding that public domain includes private ranges or enclosures belonging to individuals."[32]

Title As Aid In Determing Intent of Act

In addition to the obvious necessity of compliance with the constitutional requirement to avoid invalidating an act, drafters should keep in mind the fact that the court often refers to the title to interpret the effect of ambiguous provisions of the act.[33]

Obvious Mistake In Title

In its concern to preserve the constitutionality of bills attacked because of defective titles, the court has on several occasions corrected obvious mistakes in the title. An act entitled: "AN ACT REPEALING [certain sections] OF THE POLITICAL CODE RELATING TO THE EMPLOYMENT OF THE STATE LAND AGENT AND HIS ANNUAL SALARY" actually *amended* the sections referred to in the title instead of *repealing* them. The court held that the misuse of the word "repeal" in the title

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[32] **State v. Cunningham,** 35 Mont. 547.

[33] "We must conclude, therefore, that the title of the Act expresses the exact meaning intended and that the legislative intent was merely to regulate those engaged in the business of transporting persons and property for hire." (**Board of R. R. Commissioners v. Gamble-Robinson,** 111 Mont. 441, 449) "Had it been the intent of the state legislature to authorize nonprofit organizations to operate or maintain or possess slot machines, it no doubt would have said so, at least in the title of the Act." (**State v. Joyland Club,** 124 Mont. 122, 142) But also see **State ex rel Jensen Livestock Co. v. Hyslop,** 111 Mont. 122, 133.

could not result in overthrowing the whole law inasmuch as the title clearly pointed out the sections of the code to be affected by the bill.[34]

An act entitled: "AN ACT PROVIDING FOR UNLAWFUL LEVY AND COLLECTION OF PUBLIC REVENUE" was attacked as violating the provision. The court said that the author of the bill probably intended to say "AN ACT PROVIDING A REMEDY FOR THE UNLAWFUL LEVY AND COLLECTION OF PUBLIC REVENUE," and concluded "If the title of an act is single and directs the mind to the subject of the law in a way calculated to direct the attention truly to the matter which is proposed to be legislated upon, the object of the provision is satisfied . . . Testing the act in question by these rules it is manifest that the legislature enacted a law concerning the unlawful levy and collection of public revenue." The court upheld the title.[35]

Reference To Amended or Repealed Code Sections In Title

While it may not be necessary to list in the title all sections of the code amended or repealed in the body of the bill, it is probably desirable to do so. Such a listing alone, without reference to subject matter, has been held to be a sufficient title. "There is a multitude of authorities all of which hold that an act amendatory . . . has a sufficient title, under a constitutional provision like ours, if it cites the number of the section and the chapter of the code to be amended and affected thereby."[36] Although it apparently has not been expressly repudiated,[37] more recent cases indicate that the court no longer unequivocally accepts this rule.[38] To conform with recent decisions

[34] **State v. Page,** 20 Mont. 238, 242.

[35] **Western Ranches v. Custer County,** 28 Mont. 278, 284.

[36] **State v. Courtney,** 27 Mont. 378, 385. See also Dowty v. Pittwood, 23 Mont. 113, upholding validity of an act entitled: "AN ACT TO AMEND SECTIONS 364 and 365 OF THE FIFTH DIVISION OF THE COMPILED STATUTES OF MONTANA AND THE AMENDMENTS THERETO, APPROVED SEPTEMBER 14, 1887" and **Hotchkiss v. Marion,** 12 Mont. 218, upholding the validity of an act entitled: "AN ACT TO AMEND SECTIONS 790, 795, 796, AND 808 OF THE FIFTH DIVISION OF THE COMPILED STATUTES OF MONTANA."

[37] **Coolidge v. Meagher,** 100 Mont. 172.

[38] **State v. Duncan,** 74 Mont. 428, 436.

and to keep within the spirit of the constitutional provision, in a short bill the subject matter of the statutes amended or repealed should be indicated along with the citations, and in a bill amending or repealing many sections, the general subject of the bill should be included with the section numbers.

Whether or not it is necessary to *explain the nature or effect of an amendment* in the title, in addition to designating the subject matter and number of the amended section has been discussed on several occasions by the Montana court. "As applied to an amendatory act, [the constitutional requirement] does not require more than that the title shall refer to the statute to be amended with sufficient particularity to identify it . . . The authorities agree generally that all difficulties are avoided if the title of the amendatory act *gives the number of the section to be amended and indicates its subject matter.*"[39] (Italics supplied)

An act entitled: "AN ACT TO AMEND [certain sections] OF THE REVISED CODES OF MONTANA OF 1921 ALL RELATING TO THE IMPOSITION OF THE TAX ON THE SALE OF GASOLINE, AND THE COLLECTION AND DISPOSITION THEREOF, AND PRESCRIBING A PENALTY FOR NEGLECT OR REFUSAL TO FURNISH STATEMENTS AND TO PAY THE TAX" was attacked as being invalid. The contention was that a title which recites that certain sections of the code relating to a certain subject are to be amended is not sufficient, but that *the nature of the amendment* must be expressed in the title. The court said that such a title was held to be sufficient compliance with the constitution in a number of earlier decisions. "The subject matter of the act was to amend a certain section of the code and the amendment was germane to the provisions of that section and was upon the same subject. The subject matter, therefore, was to amend the section; and while there might have been different objects and purposes in the amended act from those contained in the original, yet the amendment was germane thereto."[40]

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[39] State v. Duncan, 74 Mont. 428, 436-7.

[40] State v. Silver Bow Refining Co., 78 Mont. 1.

In considering an act entitled: "AN ACT TO AMEND [a section of the code] RELATING TO SALE OF LANDS FOR TAXES DUE THEREON BY COUNTY TREASURER," the court said: "Such a title has been too often held sufficient to require discussion here."[41]

Although the decisions indicate that the nature of an amendment to the original act does not have to be shown in the title, where only a few sections are involved, the inclusion of such information will more adequately inform the legislature of the purpose of the bill.

The Danger In Long Titles

The Montana supreme court has consistently held that a brief title designating the general subject covered by the bill fulfills the constitutional requirement. "It is the rule in this state that if the title fairly indicates the general subject and does not tend to mislead the members of the legislature or the people, it is sufficient."[42] A comparison of legislative acts passed through the years shows an evolution from simple, concise one-sentence titles used during early leigslative sessions to the drawn-out, detailed and sometimes incomprehensible titles of today. The inclusion of excessive detail in a title often obscures the primary purpose of the bill; it also compounds the opportunity for error.

Montana attorneys might well heed the warning of the Pennsylvania Supreme Court:

> It will not be amiss at this point to call the attention of legislators and the draftsmen of statutes to the growing practice of long titles. In the desire to conform to the constitutional requirement that the subject of an act must be clearly expressed in the title it has become quite usual to load the title with details that have no proper place there, and [which] produce certain inconvenience and not improbable danger. *Expressio unius exclusio alterius.* Titles which mislead are even worse than those which merely fail to inform, and the enumeration of many details always incurs the danger that [other details] which would have

[41] Martin v. Glacier County, 102 Mont. 213, 217.
[42] State v. Duncan, 74 Mont. 428, 436.

seem cognate and germane may have been meant to be excluded. Instances are not wanting in the legislation of the last few years where the title of an act is longer and more complicated than the act itself, and . . . the query may arise whether the subject of an act can be "clearly" expressed by a title which requires more time and effort to comprehend than the enactment itself. It has always been held that the title of an act need not be a complete index to its contents. The time has come to say that it not only need not, but ought not.[43]

[43] **Commonwealth v. Broad St. Rapid Transit St. Ry. Co.**, 219 Pa. St. 11, 67 Atl. 958. Article III, Section 3 of the Pennsylvania constitution contains language identical to that appearing in Article V, Section 23 of the Montana constitution.

Chapter V

AMENDING AND REPEALING EXISTING LAWS

Relatively little new legislation is considered during a legislative session. Most bills introduced amend or repeal existing laws; even when the subject of legislation is novel and relates to a subject which has not received specific attention in the past, it is frequently necessary to amend or repeal existing sections of the law to avoid a conflict with the new act.

AMENDATORY ACTS

Existing statutes, in effect, are amended in two ways—by express amendment or by implied amendment. An implied amendment is an act which purports to be independent of, but which in substance alters, modifies, or adds to a prior act. Amendment by implication is identical with repeal by implication when only part of the prior statute is repealed. The latter term is much more frequently applied to the situation.[1] Under all circumstances implied amendment or repeal should be avoided. Amendments by implication, like repeals by implication, are not favored and will not be upheld in doubtful cases. Amendments to existing laws should be expressed by setting out the entire section in full showing the amendment.

No Act May Be Amended By Reference To Its Title Only

Section 25, article V of the Montana constitution provides: "No law shall be revised or amended, or the provisions thereof extended by reference to its title only, but so much thereof as is revised, amended or extended shall be reenacted and published at length."

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[1] Sutherland, Statutes and Statutory Construction (3rd ed., Horack, 1943).

The constitutional inhibition against revision or amendment of a law by reference to its title only has no application to amendments by implication. The object of this constitutional prohibition was to remedy a well known evil. Acts were often passed amending existing statutes by substituting one word for another, or one phrase for another or by inserting or eliminating a sentence or part of a sentence, without reference to the amended statute except by title. Thus unjust legislation was enacted by covert means, its real purpose being unforeseen.[2]

If the act is original in form—if by its own language it grants some power, confers some right, or creates some burden or obligation, it is not in conflict with the constitutional provision merely because it refers to some other existing statute for the purpose of pointing out the procedure, or some administrative detail necessary for the execution of the power, the enforcement of the right, the proper performance of the duty, or the discharge of the burden or obligation.[3] Statutes which by reference adopt, wholly or partially, pre-existing statutes are not strictly amendatory or revisory in character, and are not obnoxious to the constitutional provision.[4]

The question of whether or not a subsection or paragraph can be amended without setting out the parent section at length has never been adjudicated in Montana. The courts in several states with similar constitutional provisions have upheld such acts, although there is authority directly to the contrary. If the subsection or paragraph is self sufficient, and is set out at length, such an act would not seem to be contrary to the spirit of the constitutional provision. However, the danger of an act of this kind being declared invalid will exist until a court test is made.

In *State v. Gallatin County High School District,*[5] the court considered an act which provided "That as an emergency measure, the effective period of chapter 24 of the

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[2] King v. Pony Gold Mining Co., 24 Mont. 470, 478.

[3] Spratt v. Helena Power Transmission Co., 37 Mont. 60, 82.

[4] State v. Gallatin County High School District, 102 Mont. 356.

[5] 102 Mont. 356, 366.

laws of the Extraordinary Legislative Assembly of Montana of 1933-34, be, and the same is hereby extended to June 1, 1937, and that all the provisions of said act shall be and remain in full force and effect until the date aforesaid, on which date said act shall cease to be operative." The court said: "Here the reference . . . is not to the 'title' of chapter 24, but to the act itself, its body and substance, 'the provisions thereof' if you will, but does not propose to change these provisions in any particular; it merely proposes to extend the beneficial effect of those provisions for an additional two years. This is to *prolong,* rather than to *extend* the life of the act."

The court, in this 1936 decision upholding the validity of an act extending the Public Works Emergency Relief Program, may have been guided by its consideration of the substantive policy embodied in the act, and, consequently, may have stretched the legal peg on which it hung its decision. Yet, the test of whether an act is "complete and independent" is often regarded as formal in nature. Because this act did not attempt to modify an existing statute by providing that certain words, phrases or clauses should be inserted, or stricken or both, the court's decision can be legally justified.

The case of *Northern Pacific Railway Co. v. Dunham,*[6] involved a section of the code which provided: "Wherever, by statute, rule, or law, it is or shall be provided that any tax shall or may be levied to the extent of a given number of mills on the property, within any county, or tax district or unit . . . the said expressions shall be taken to mean the value of the taxable property in such county, tax district, or tax unit as ascertained and determined by taking a percentage of the true and full value, provided, or to be provided, by law, rule, or practice, for the purposes of taxation, unless a meaning otherwise expressly and clearly appears to the contrary."

The court held that this section was in direct conflict with section 25 of article V of the constitution and said, ". . . an act which attempts to amend an existing statute

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[6] 108 Mont. 338, 341-2.

by mingling the new provisions with the old, or adding new provisions so as to create out of the old and new together the law on the subject making it necessary to read the two statutes together in order to determine what the law is, is within the constitutional prohibition and void; and this is so although the latter statute professes to be independent and complete in itself . . . it has been uniformly held that the constitutional prohibitions apply only to laws which are strictly amendatory or revisory in their character and which are usually unintelligible without reference to the former statute to express amendments only."

The court held that the section was not complete in itself. "To ascertain its scope and meaning a search must be instituted throughout the statutes to ascertain what sections purport to be amended by it . . . The only purpose of section 1996.1 was to amend the various statutes which purport to be affected by it. If it were complete in itself, then the fact that many sections were amended by implication would constitute no ground for condemning it. The fact that it is not complete in itself, but seeks to engraft upon existing statutes in wholesale fashion certain provisions in the manner in which it seeks to do it, makes the act invalid under section 25 of article V." The court said that whether the act is amendatory in character is determined, "not alone by the title nor whether the act purports to be an amendment of the existing laws, but by an examination and comparison of its provisions with the prior law as last in force."[7]

The *Gallatin County* decision and the *Northern Pacific* decision seem to be at opposite poles. The former upheld an act which, at least in some jurisdictions, would be regarded as "not complete within itself" while the latter invalidated an act which did not directly "purport to amend

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[7] According to Sutherland, in only a minority of jurisdictions have acts not purporting to amend been held amendatory because in substance they altered or modified a prior act and were not complete within themselves. Although the **Northern Pacific** decision is not cited by Sutherland, three cases cited by the Montana court to support its decision are listed by Sutherland as expressing the minority viewpoint. Sutherland, **Statutes and Statutory Construction** (3rd ed., Horack, 1943) Sec. 1918, N. 2 and 3.

a prior act" and which was "complete within itself." The standards adopted by the court for determining whether an act is amendatory in character in the *Northern Pacific* decision represent the minority view, and the result seems to be inconsistent with earlier Montana cases.[8]

In light of the *Northern Pacific* decision, the practice of referring to sections by number to be repealed "insofar as they conflict with a provision of the act" may be risky.[9]

Form of Amendment

When amending an existing law, a brief, simple amending clause can be used.

EXAMPLE Section 1. Section 16-1015, R.C.M. 1947, is amended to read as follows:

"16-1015. Taxation. The board of county commissioners has jurisdiction and power under such limitations, etc."

The inclusion of unnecessary detail and redundant language results in an unwieldy amending clause.

EXAMPLE Section 1. That Section 16-1015, Revised Codes of Montana 1947, as amended by chapter 69 of the Laws of the Thirty-fourth Legislative Assembly, 1955, be, and the same is hereby amended to read as follows:

"Section 16-1015 (4465.12) Taxation. The board of county commissioners has jurisdiction and power under such limitations, etc."

It is not necessary to include the full name "Revised Codes of Montana, 1947." Section 12-303, R.C.M. 1947, provides that the codes may, for all purposes, be cited by the abbreviation "R.C.M. 1947." The inclusion of the full name of the code simply adds to the size and cost of bills.

Neither is it necessary to include the 1935 code citation. The 1935 codes are not frequently referred to during

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[8] In King v. Pony Gold Mining Co., 24 Mont. 470, the court upheld an act establishing certain conditions and requirements "in all cases where an undertaking or bond with any number of sureties is authorized or required by any provision of the code."

[9] See House Bill 391, 1961 session.

the session; if they are, volume 1 of the 1947 code contains handy cross reference tables. If a bill becomes law, the codifier will add the 1935 code citation.

It is not necessary to refer to the previous amendments to a section of the code when amending a section. When the legislature declares an existing statute to be amended "to read as follows" it demonstrates its intention to make the new act a substitute for the amended statutes.[10] It is not necessary, in making a second amendment of the original act, to make any reference to the first amending act.[11] When amending a statute which has been previously amended, the title of the amendatory act is sufficient if it reasonably identifies the original act. The intervening amendments are treated as incorporated into the original act. Thus, when the legislature refers to an official section of the code as being "amended to read as follows" it refers to that section of the code as it presently exists, including all amendments subsequent to its original enactment.

However, if a section in the pocket supplement was originally enacted after the adoption of the replacement column in which it is compiled, reference should also be made to the session law when amending that section. The section number will have been assigned by the compiler but will not yet have been officially adopted by the legislature. In this situation either of the following two forms is recommended.

> Section 1. Section 85-301, R.C.M. 1947, enacted as section 3, chapter 4, Laws of 1959, is amended to read as follows:
>
> Section 1. Section 3, chapter 4, Laws of 1959, compiled as section 85-301, R.C.M. 1947, is amended to read as follows:

A recent change in Senate and House Joint Rule 20 provides that "Bills proposing amendments to existing statutes shall indicate the matter to be stricken out with a line through the words or part to be deleted, and all new

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[10] **State ex rel Nagle v. The Leader Co.**, 97 Mont. 586, 591.
[11] 19 Atty. Gen. Ops., No. 394.

matter with underscoring of the part inserted." Thus, beginning with the 1963 legislative session, words stricken from a bill will no longer be designated as "(matter deleted)" but will be shown in the body of the bill with a line typed through them.

As in the past, new matter added to existing statutes must be underscored. This rule does not require the underlining of completely new sections in a bill which also contains amendatory sections, but requires only the underlining of new material added to existing statutes.

When an amendatory act declares that a section of the code shall "read as follows," should the title or heading of the section as it appears in the codes be included within the quotation of the section that follows? Most draftsmen do not include a section title or heading when drafting a new section; the addition of this caption is usually left to the codifier. The court will refer to the section title in order to determine legislative intent, unless the title was not in the act at the time of adoption by the legislature but was added by the codifier.[12] Once the code has been adopted the heading becomes a part of the code, and when an amendatory act declares that a section "shall read as follows" and includes the section heading, it technically becomes part of the law. Therefore, on purely legal grounds it would seem advisable to include the heading when setting out the amended section at length. For practical purposes, the inclusion of the heading will serve as a reminder to the draftsman to amend it in accordance with changes made in the body of the section—something the compiler does not always do.

Some Montana Statutes and Rules Relating To Amendments

The draftsman should be familiar with two Montana statutes pertaining to amendatory legislation. Section 43-510 provides, "Where a section or a part of a statute is amended, it is not to be considered as having been repealed and reenacted in the amended form, but the por-

[12] State ex rel Palagi v. Regan, 113 Mont. 343, 351.

tions which are not altered are to be considered as having been the law from the time when they were enacted, and the new provisions are to be considered as having been enacted at the time of the amendment." Section 43-515 provides, "An act amending a section of an act repealed is void." This is true in the case of implied as well as expressed repeal.[13]

It is generally presumed that where the phraseology of a statute is changed, the legislature, in adopting the amendment, intended to make a change in the existing law, and the courts will endeavor to give some effect to the amendment. But every change in phraseology does not indicate a change of substance and intent. The change may be to express more clearly the same intent or to improve the diction. While the presumption to change the substance is fairly strong in the case of an isolated, independent amendment, it is of little force in the case of amendments adopted in the general revision or codification of the laws.[14]

If the amendatory act is not germane to the subject matter of the act to be amended, then it is not of any effect whatever as an amendment.[15] This is simply an application of the constitutional requirement that no bill may contain more than one subject.

REPEALS AND REPEALING ACTS

The distinction between repeal and amendment, as these terms are used by the courts, is arbitrary, and is based largely on how the legislatures have developed and applied these terms in labeling their enactments. When a section is being added to an act, or a provision added to a section, legislatures call the act an amendment. However, when an entire act or section is abrogated and no new section is added to replace it, legislatures label the act accomplishing this result a repeal.[16]

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[13] **State v. Holt,** 121 Mont. 459, 469.

[14] **State v. Wibaux County Bank,** 85 Mont. 532, 540.

[15] **Durland v. Prickett et al,** 98 Mont. 399, 410.

[16] Sutherland, **Statutes and Statutory Construction** (3d ed., Horack, 1943), Sec. 2002.

Before his job is complete, the draftsman must determine what specific statutes should be repealed if his bill is enacted. He should specifically designate these statutes in a special repeal section.

When the subject of the bill is complex the problem of locating all of the displaced statutes may be time consuming. "It is not surprising that draftsmen often fall back on the flimsy expedient of a general repeal clause. Although such a clause has the air of legislative respectability, it is at best a waste of time and print, since it only says what would necessarily be so without it."[17] Sutherland says a general repealing clause ". . . is in legal contemplation a nullity. Repeals must either be expressed or result by implication. A general repealing clause cannot be deemed an express repeal because it fails to identify or designate any act to be repealed. It cannot be determinative of an implied repeal for it does not declare any inconsistency but conversely, merely predicates a repeal upon the condition that a substantial conflict is found under application of the rules of implied repeals."[18]

The Montana supreme court agrees. "Courts in general, in speaking of these repealing clauses, have held that they add nothing to the repealing effect of the act of which they are a part, as without the clause all prior conflicting laws, or parts of laws, would be repealed by implication."[19]

Express repeal of an existing statute may be accomplished as follows:

"Section 5. Sections 10-1001 and 89-402, R.C.M. 1947, are repealed."

On the other hand, it may be desirable to protect specific existing laws from possible implied repeal as follows:

"Section 5. This act is intended to be supplementary, and is not intended to repeal sections 84-4905 through 84-4907, R.C.M. 1947 or any other law relating to the state income tax."

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[17] Reed Dickerson, **Legislative Drafting,** Boston, 1954, p. 105.

[18] Sutherland, **Statutes and Statutory Construction** (3d ed., Horack, 1943), Sec. 2013.

[19] **State ex rel Charette v. District Court,** 107 Mont. 489, 494.

Several Montana statutes relate to repeals. Section 43-512, R.C.M. 1947 provides, "Any statute may be repealed at any time except when it is otherwise provided therein. Persons acting under any statute are deemed to have acted in contemplation of this power of repeal." The exception in the first sentence of this section seems to be obivously invalid since it is well accepted that a legislature may not bind itself or a future legislature by enacting an irrepealable law.[20] Apparently, all decisions of the Montana court interpreting this statute have involved only the second sentence.

Section 43-513, R.C.M. 1947, provides, "No act or part of an act, repealed by another act of the legislative assembly, is revived by the repeal of the repealing act without express words reviving such repealed act or part of act."

Section 43-514, R.C.M. 1947, provides, "The repeal of any law creating a criminal offense does not constitute a bar to the indictment or information and punishment of an act already committed in violation of the law so repealed, unless the intention to bar such indictment or information and punishment is expressly declared in the repealing act."

[20] An exception to this general rule is necessitated by Section 2, Article XIII of the constitution which provides that "The legislative assembly shall not in any manner create any debt except by law which shall be irrepealable until the indebtedness therein provided for shall have been fully paid or discharged. . ."

Chapter VI
SPECIAL TYPES OF LEGISLATION

CONSTITUTIONAL AMENDMENTS

Section 9, article XIX of the Montana constitution specifies the following procedure for amending the constitution:

(1) Either house may propose an amendment.

(2) It must be approved by a two-thirds vote of both houses with the vote entered in full on the journal of each house.

(3) The secretary of state is required to publish the amendment in full in at least one newspaper in each county for three months previous to the next general election.

(4) The amendment is submitted to the voters at the next election.

(5) If approved by a majority of those voting on the amendment, it becomes part of the constitution.

(6) If more than one amendment is submitted, they must be so prepared and distinguished by numbers or otherwise that each can be voted upon separately.

(7) A maximum of three amendments may be submitted at the same election.

In addition to these express requirements, the state supreme court, in a 1960 decision,[1] ruled that the proposed amendment must be submitted to the governor for his approval. The court cited article V, section 40, as authority for this requirement.

The constitution does not prescribe the form in which a proposed amendment shall be submitted to the legislature; it may be by bill or by joint resolution.[2] Proposed amendments, however, have traditionally been introduced as bills.

[1] **State ex rel Livingstone v. Murray,** 354 P2 552, 556.
[2] **Tax Commission Case,** 68 Mont. 450, 465.

Ballot Instructions and Procedure

The constitutional requirements to be followed in submitting the amendment to the electorate are mentioned above. Other general statutes provide additional requirements to be observed by the secretary of state and other officials.[3] Therefore it is unnecessary to include in the bill proposing the amendment a lengthy explanation of procedures, unless a procedure differing from that required by statute is desired. For example, a directive stating that "the vote cast for and against the amendment herein proposed shall be counted, canvassed and determined by such officials and in such manner as provided by law" is superfluous.

Title

Section 37-105 R.C.M. 1947 provides that the secretary of state shall furnish to county clerks certified copies of the titles and numbers of the various measures to be voted on at elections, and provides that the title shall in no case exceed 100 words. This requirement, as it pertains to initiatives and referenda has been interpreted by the supreme court as mandatory when the measure is attacked before the election but as directory only after an election.[4] In any event, if the act passed by the legislature by its own provisions requires a departure from such requirements, it will control as the latest legislative expression.

A recent supreme court decision[5] casts some doubt on the sufficiency of printing only the title on the ballot. "The constitution requires, among other procedures, that 'at said election the said amendment shall be submitted to the qualified electors of the state for their approval or rejection,' not just a predetermined title or unintelligible statement of words." This dictum suggests that the entire amendment must be included on the ballot.

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[3] See Section 37-105, 37-106, 37-107, 37-108 and 37-109, R.C.M. 1947.

[4] **Nordquist v. Ford,** 112 Mont. 278, 282.

[5] **State ex rel Livingstone v. Murray,** 354 P2 552.

Effective Date of Amendment

The constitution provides that such amendments "as are approved by a majority of those voting thereon shall become a part of the constitution." Section 37-108 R.C.M. 1947 provides that, after the votes are canvassed, the governor shall issue a proclamation "declaring such measures as are approved by a majority of those voting thereon to be in full force and effect as the law of the state of Montana, from the date of said proclamation. . ."

Consequently, it is not necessary to include in the bill a requirement that the governor proclaim the passage and effectiveness of the amendment. In fact, because of the constitutional provision mentioned above, the amendment presumably "becomes a part of the constitution" as soon as it is determined that a majority has approved it, with or without a proclamation by the governor.

While amendments to the constitution normally do not have effective dates, if a delay in the effective date is desired it should be included in *the body of the amendment,* not in the ballot instructions. Thus the effective date is made a provision of the amendment and becomes a part of the constitution upon approval by the electorate as required by the constitution.

Unity of Subject

The constitution requires that if more than one amendment is submitted at the same election they must be presented so that they can be voted on separately. "The fact that an amendment can be separated into two or more propositions concerning the value of which diversity of opinion may exist is not alone decisive. If, in the light of common sense, the propositions have to do with different subjects, if they are so essentially unrelated that their association is artificial, they are not one; but if they may be logically viewed as parts or aspects of a single plan, then the constitutional requirement is met in their submission as one amendment."[6] The constitutional provision does not prohibit the submission of an amendment

[6] **State ex rel Hay v. Alderson,** 49 Mont. 387, 404.

affecting more than one section or article of the constitution. "The fact that an amendment impinges upon or affects various provisions of the constitution is not in itself persuasive that essential unity was violated in its submission. The real question is whether the operation of the amendment relates to a single plan or purpose."[7] The unity of subject implicity required by the provision does not essentially differ from the unity of subject required by section 23, article V of the constitution concerning acts of the legislative assembly[8] which is discussed at length in chapter IV of this manual. A sample constitutional amendment appears in Appendix B.

RESOLUTIONS AND MEMORIALS

There is some confusion and inconsistency in the use of resolutions and memorials in the Montana legislative assembly. There are no definitions of memorials or resolutions to be found in the codes or the house and senate rules. Accepted definitions and usage of resolutions and memorials in many other states are apparently not observed in Montana.

Resolutions

A resolution may be defined as a formal expression of the opinion or will of the legislature adopted by vote. A simple resolution is a formalized motion passed by the majority of a single house; a joint resolution must be approved in identical form in both houses to be effective.

Some purposes for which resolutions are used are:

(1) To send a request or instruction to a state agency.

(2) To express approval or disapproval of an act of a state agency or local unit of government.

(3) To express sympathy, approval or other opinion of an event occurring outside of state government.

(4) To change a house or senate rule or a joint rule of the house and senate.

(5) To legislate on a subject solely within the competence of the legislative assembly or either of its houses.

[7] State ex rel Corry v. Cooney, 70 Mont. 355, 365.
[8] State ex rel Hay v. Alderson, 49 Mont. 387, 404.

Under the constitutions of some states, joint resolutions are recognized as the equivalent of duly enacted statutes. In Montana "a resolution is not of the same dignity as a bill which has been enacted into a law and therefore where a resolution is in direct conflict with the statute, the statute must prevail, for the reason that it is the law of the state, while a resolution is merely an expression of the wishes of the legislature."[9] Because the Montana constitution provides that "No law shall be passed except by bill,"[10] resolutions should be used only for proposals having none of the mandatory characteristics of law. If a resolution is "legislative in character," that is, if it goes beyond a mere recommendation or expression of opinion and does not relate to a subject solely within the competence of the legislature, it is subject to veto by the governor.[11]

Section 43-509, R.C.M. 1947 provides "Every joint resolution, unless a different time is prescribed therein, takes effect from its passage."

Memorials

Memorials are no different from resolutions in effect, but are normally used only for the purpose of expressing an opinion to, or making a request of Congress, the President or a federal agency. Usually joint memorials are used for this purpose, but occasionally one house will memorialize Congress by a simple memorial.

Title of Resolutions and Memorials

The title of a resolution or memorial should express its subject, although there is no constitutional requirement as in the case of bills.

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[9] 12 Atty. Gen. Ops., p. 40.

[10] Sec. 19, Art. V.

[11] 26 Atty. Gen. Ops., p. 26.

The Preamble

The preamble consists of the "whereas" clause or clauses which immediately follow the title.

EXAMPLE

WHEREAS, the legislative assembly of the state of Montana is burdened by the manner and time of submission of bills by various executive departments; and

WHEREAS, many executive departments neglect the, etc.

The Resolving Clause

In resolutions and memorials, a resolving clause is used, instead of the enacting clause that is required for a bill. The resolving clause immediately follows the preamble.

EXAMPLE

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislative assembly requests the governor to issue all necessary orders, etc.

BE IT FURTHER RESOLVED, that copies of this resolution be sent, etc.

Copies of Memorials and Resolutions

Memorials and resolutions that contain a message to someone outside the legislature, should include a clause that designates the persons or agencies that are to receive a copy. However, it should not provide that copies be sent to "all members" of Congress, because of the time and expense involved in preparing enrolled copies for transmittal.

Samples of a joint resolution, joint memorial and simple resolution are contained in Appendixes C, D and E.

Chapter VII

STATUTORY CONSTRUCTION

Lengthy and scholarly treatises have been written on the subject of statutory construction. Reference to such excellent works as Sutherland's *Statutes and Statutory Construction* and Crawford's *The Construction of Statutes* will assist the draftsman in solving many of the problems that arise while drafting legislation, and will serve to acquaint him with the principles of statutory construction.

It would be presumptuous to attempt to set forth here all a draftsman should know about statutory construction; he is referred to the above authorities. The purpose of this chapter is only to present an admittedly arbitrary and incomplete listing of some of the more important rules, with special attention to Montana statutes and case law.

Taking the principles of statutory construction into account should not mean relying on them to carry the meaning of a bill. The draftsman should attempt to make his message clear without raising the questions which the principles are intended to answer. Moreover, the role of the court is limited; it cannot supply a plain interpretation where none is possible.

> No court can take upon itself the role of a Polonius and always see what someone else desires it to see, as in the dialogue between Hamlet and Polonius:
>
> 'Ham. Do you see yonder cloud that's almost in shape of a camel?
> Pol. By the mass, and 'tis like a camel, indeed.
> Ham. Methinks it is like a weasel.
> Pol. It is backed like a weasel.
> Ham. Or like a whale?
> Pol. Very like a whale.'[1]

[1] **State ex rel Durland v. Board of County Comm.**, 104 Mont. 21, 26.

However, understanding the rules of statutory construction will enable the draftsman to anticipate and avoid the interpretative problems that can arise after the passage of a legislative act.

In General

In the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all. (Section 93-401-15, R.C.M. 1947)

When a statute is equally susceptible of two interpretations, one in favor of natural right, and the other against it, the former is to be adopted. (Section 93-401-23, R.C.M. 1947)

When the terms of a statute are plain, unambiguous, direct and certain, it speaks for itself, and there is nothing for the courts to construe. (*State v. Brannon,* 86 Mont. 200, 209)

In construing a statute, every word, phrase, clause or sentence employed is to be considered and none shall be held meaningless if it is possible to give effect to it. The intention of the legislature must be ascertained and followed, if it is possible to do so, gathering that intention, first, if possible, from the plain meaning of the words employed. (*State ex rel Nagle v. Sullivan,* 98 Mont. 425, 440)

In construing a statute, the court must ascertain the intention of the legislature from consideration of the act as a whole and not from the wording of any particular section. (*State v. Board of Commissioners,* 89 Mont. 37, 87) All provisions should be construed together and effect given to all, if possible. (*State v. Bawden,* 51 Mont. 357, 360)

In interpretation of statutes as to legislative intent, recourse must first be had to the language employed, indulging the presumption that the terms used were in-

tended to be understood in their ordinary sense, unless it is apparent that they were intended to be given a different meaning, and if then there be room for doubt as to its intent, the title of the act, presumably indicating its intention, may be looked to. (*Morrison v. Farmers & Traders State Bank*, 70 Mont. 146, 151)

In the construction of a statute, the intention of the legislature must, if possible, be pursued. The court must look not only to the words employed, but also to the evil to be remedied. (*State ex rel Boone v. Tullock*, 72 Mont. 482, 487)

A supposed unexpressed intent in enacting a statute cannot override the clear import of the language employed. (*State ex rel Palagi v. Regan*, 113 Mont. 343, 350)

Though a statute must be liberally construed, the court cannot go beyond its plain provisions. (*Harrington v. B.A.P. Ry. Co.*, 36 Mont. 478, 483)

In arriving at the legislature's intention, it is proper to consider not only acts passed at the same session, but also acts passed at prior and subsequent sessions. (*Putnam v. Putnam*, 86 Mont. 135, 142)

When Montana adopts a statute from a sister state prior to interpretation by the highest court of that state, the supreme court of Montana is not bound by the foreign state's interpretation of the statute. (*State ex rel Kommers v. District Court*, 109 Mont. 287, 291)

Statute In Derogation of Sovereignty

State statutes relinquishing public power or jurisdiction are to be strictly construed. (*Valley County v. Thomas*, 109 Mont. 345, 368)

General words in a statute which might have the effect of restricting governmental powers should be construed as not applying to the state or its subdivisions. Thus, a statute requiring "any person" digging a ditch across a public road to protect the road does not apply to the water conservation board, a state agency. (*State ex rel City of Livingston v. Board*, 332 P 2d 913, 916)

Delegation of Legislative Power

Delegation of power to determine who are within the operation of a law is not a delegation of legislative power. But it is essential that the legislature shall fix some standard by which the officer or board to whom the power is delegated may be governed, and not left to be controlled by caprice. (*State v. Stark,* 100 Mont. 365, 371)

In 1960 the state supreme court held a statute unconstitutional in *Bacus v. Lake County,* 354 P2 1056, 1061, on grounds of an indefinite standard in the delegation of power. The statute in question provided that county and district boards of health may enact rules and regulations "pertaining to the prevention of disease and the promotion of public health" over the areas of their jurisdiction "but in no instance shall such rules and regulations be less effective than, nor in conflict with, rules and regulations promulgated by the state board of health."

Conflicting Acts

For an earlier statute to be repealed by a later one, they must be plainly and irreconcilably repugnant to, or in conflict with each other; must relate to the same subject; and must have the same object in view. (*Wheir v. Dye,* 105 Mont. 347, 359)

Where there is one statute dealing with a subject in general and comprehensive terms, and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but, to the extent of any necessary repugnance between them, the special will prevail over the general. (*Story Gold Dredging Co. v. Wilson,* 106 Mont. 166, 175)

In the construction of a statute the intention of the legislature is to be pursued if possible; and when a general and a particular provision are inconsistent, the latter is paramount to the former. So a particular intent will control a general one that is inconsistent with it. (Section 93-401-16, R.C.M. 1947)

It is a canon of statutory construction that a later statute general in its terms and not expressly repealing a prior special or specific statute, will be considered as not intended to affect the special or specific provisions of the earlier statute, unless the intention to effect the repeal is clearly manifested or unavoidably implied by the irreconcilability of the continued operation of both, or unless there is something in the general law or in the course of legislation upon its subject matter that makes it manifest that the legislature contemplated and intended a repeal. *State Aeronautics Commission v. Board of Examiners,* 121 Mont. 402, 417.

If conflicting provisions are found in different sections of the same chapter, the provisions of the section last in numerical order must prevail, unless such construction is inconsistent with the meaning of such chapter. (Section 12-212, R.C.M. 1947)

Penal Statutes

The rule of the common law, that penal statutes are to be strictly construed, has no application to this code. (Section 94-101, R.C.M. 1947)

Penalties are not favored, and penal statutes must be strictly construed and will not be extended by construction. (*Shipman v. Todd,* 131 Mont. 365, 368) Courts will not apply penal statutes to cases which are not within the obvious meaning of the language employed by the legislature, even though they be within the mischief intended to be remedied. (*State ex rel Penhale v. State Highway Patrol,* 133 Mont. 162, 165)

A penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties. If the act is so vague in its terms that men of common intelligence must necessarily guess at its meaning and differ as to its application, it violates the first essential of due process of law. (*Clack v. Public Service Commission,* 94 Mont. 488, 502)

Construction With Reference To The Common Law

In this state there is no common law in any case where the law is declared by the code or the statute; but where not so declared, if the same is applicable and of a general nature, and not in conflict with the code or other statutes, the common law shall be the law and rule of decision. (Section 12-104, R.C.M. 1947)

A statute upon a subject governed by the common law is not presumed to make any alteration in that law further than is expressly declared. A statute, made in the affirmative, without a negative express or implied, does not take away the common law save to the extent that is expressly or by necessary implication so declared. (*Pritchard Petroleum v. Farmers Co-op & Supply,* 121 Mont. 1, 15)

The common law of England, so far as it is not repugnant to or inconsistent with the constitution of the United States, or the constitution of the laws of this state, or of the codes, is the rule of decision in all the courts of this state. (Section 12-103, R.C.M. 1947)

The rule of the common law that statutes in derogation thereof are to be strictly construed has no application to the codes or other statutes of the state of Montana. (Section 12-202, R.C.M. 1947)

Grammar and Punctuation

In construing a statute the courts will endeavor to give effect to the purpose and intent of the legislature, and for that purpose will apply the ordinary rules of grammar. (*Jay v. School Disrtict No. 1,* 24 Mont. 219, 224)

Legislatures are presumed to know the meaning of words and the rules of grammar. Where words are not used in a technical sense nor have acquired a peculiar meaning in the law, they must be taken in their ordinary sense and with a meaning commonly given to them. (*Lewis v. Petroleum County,* 92 Mont. 563, 566)

Punctuation is not part of the English language. It is always subordinate to the text. The words of an act of the legislature control the punctuation marks, and not the punctuation marks the words. (*Clinton v. Miller,* 124 Mont. 463, 472)

Retroactive Laws

Section 12-201, R.C.M. 1947 provides that "no law contained in any of the codes or other statutes is retroactive unless expressly so declared." This is but a rule of construction. A statute which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty or attaches a new disability in respect to transactions already past, is deemed retroactive. (*Butte & Superior Mining Co. v. McIntyre,* 71 Mont. 254, 263)

The terms "retrospective" and "retroactive" as applied to laws, are used interchangeably and are synonymous. *(Continental Oil Co. v. Montana Concrete Co.* 63 Mont. 223, 231)

Article III, section 11 of the constitution, insofar as it prohibits ex post facto legislation, refers to crimes and not to matters which affect private rights retroactively. The legislature is free to pass any retroactive laws which do not violate the obligations of contracts or interfere with any vested rights. (*Durocher v. Myers,* 84 Mont. 225, 231)

Express Mention and Implied Exclusion

The express mention of one thing in a statute implies exclusion of another under the maxim *"expressio unius est exclusio alterius."* (*Stephens v. City of Great Falls,* 119 Mont. 368, 381) The rule is one of interpretation and not a constitutional demand. (*State ex rel Board of Comms. v. Bruce,* 104 Mont. 500, 510)

Pari Materia Rule

Statutes which are not inconsistent with one another, and which relate to the same subject matter are *in pari materia,* and should be construed together, and effect given to both if it is possible to do so. (*State ex rel Riley v. District Court,* 103 Mont. 576, 583)

Doctrine of the Last Antecedent

Relative and qualifying words, phrases and clauses are to be applied to the word or phrase immediately preceding, and are not to be construed as extending to or includ-

ing others more remote. *(Cobban Realty Co. v. Chicago, etc. Ry.,* 58 Mont. 188, 191) (Unless consideration of the entire act requires applying them to others—*State v. Anderson,* 92 Mont. 298, 302)

Ejusdem Generis Rule

Where general words follow an enumeration of particular subjects, such words must be held to include only such objects or things as are of the same general character of those specifically mentioned. (*State ex rel Bowler v. County Commissioners,* 106 Mont. 251, 256)

Definitions

In construing a statute, the court is bound to follow legislative definitions contained therein, even though they are contrary to the usual and ordinary meaning of the words. (*Montana Beer Retailers Protective Association v. State Board,* 95 Mont. 30, 34)

Where the same word or phrase appears in different parts of a statute, it will be given the same meaning unless a contrary intention clearly appears. (*State v. District Court,* 51 Mont. 305, 307)

Whenever the meaning of a word or phrase is defined in any part of the code, that definition is applicable to the same word or phrase wherever it occurs, except where a contrary intention plainly appears. (Section 12-215, R.C.M. 1947)

Words and phrases used in the codes or other statutes of Montana are construed according to the context and approved usage of the language; but technical words and phrases, and such others as have acquired a peculiar and appropriate meaning in law, or are defined in section 19-103, are to be construed according to such peculiar and appropriate meaning or definition. (Section 19-102, R.C.M. 1947)

The following words when used in the Revised Codes of Montana of 1947, or in any act amendatory of or supplemental to the codes, shall have the following meanings and interpretations unless otherwise apparent from the context.

The present tense includes the future as well as the present.

Words used in the masculine gender include the feminine and neuter.

The singular number includes the plural and the plural, the singular.

The word person includes a corporation as well as a natural person.

Writing includes printing.

Oath includes affirmation or declaration, and every mode of oral statement under oath or affirmation is embraced in the term "testify," and every written one in the term "depose."

Signature or subscription includes mark when the person cannot write, his name being written near it, and written by a person who writes his own name as a witness.

The word "property" includes property real and personal.

The words "real property" are co-extensive with lands, tenements, hereditaments and possessory title to public lands.

The words "personal property" include money, goods, chattels, things in action and evidence of debt.

The word "year" means a calendar year, and a "month," a calendar month, unless otherwise expressed. Fractions of a year are to be computed by the number of months, thus, half a year is six (6) months. Fractions of a day are to be disregarded in computations which include more than one (1) day and involve no questions of priority. (See section 19-103 R.C.M. 1947 for remainder of list.)

Chapter VIII

THE PREPARATION, INTRODUCTION AND AMENDMENT OF BILLS

Preparing Bills

Joint rules 9 and 20 contain the instructions and requirements for preparing legislation for introduction in the Montana Legislative Assembly.

JOINT RULE NO. 9

Title and Number of Bills. The tile of every bill shall briefly state its general object, and every bill shall be numbered by the Bill Clerk, and the title thereof and the name of the member or committee introducing the same shall be endorsed thereon. Any bill, amending or repealing existing statutes, introduced shall, below the line on which the bill's authorship is indicated, and before the title of the bill, provide a key in letters and numerals showing the section or sections, of the Revised Codes of Montana, 1947, and all amendments or repeals thereto.

JOINT RULE NO. 20

Form of Bills. Bills, joint resolutions and joint memorials introduced shall be typewritten on paper eight and one-half by thirteen inches with numbered lines, and shall be in quadruplicate. Pica type and a good black ribbon must be used. All bills, joint resolutions and joint memorials introduced shall be numbered at the foot of each page and shall have white covers of a substantial material. Bills proposing amendments to existing statutes shall indicate the matter to be stricken out with a line through the words or part to be deleted, and all new matter with underscoring of the part inserted.

No bill, except general appropriation bills, and bills for the codification and general revision of the laws, shall contain more than one subject, which shall be clearly expressed in the title; and no bill shall be so altered or amended on its passage through either house as to change its original purpose. The enacting clause of every bill shall be as follows: "Be it enacted by the Legislative Assembly of the State of Montana."

Both of these rules contain new requirements which were adopted during the 1961 session.

Joint rule 20 establishes a new procedure for indicating when material is deleted from an amended statute. The material itself is retained in the bill with a line through it. House rule 34 was not changed when these new requirements were adopted but as much of that rule as is in conflict with Joint Rule 20 may be disregarded.

Joint Rule No. 9 was amended to include a requirement that any bill amending or repealing a section of the code include a list of all sections amended or repealed by the bill. The purpose of the requirement is to make possible an electronic screening of all legislation that will indicate when separate bills affect the same sections of the code.

A sample bill in Appendix A illustrates the form of a bill.

Typing Instructions

Joint Rule 20 requires that bills be introduced in quadruplicate. Therefore, if a file copy is to be retained, an original and four carbons should be typed.

Bills are typed on legal size paper, 8½x13 inches with ruled margins and numbered lines.

The left marginal stop should be two spaces from the numbered border for pica type. Lines should not exceed 65 spaces. The entire bill, including the title, is double spaced.

(1) On line 1 centered type:.....BILL NO.....

(2) On line 2: INTRODUCED BY.....

(3) Double space twice.

(4) Type key list of all sections amended or repealed in bill. (Do not indent.)

(5) Double space twice.

(6) Start the title as follows: (Do not indent.) A BILL FOR AN ACT ENTITLED: Titles are always in caps.

(7) Double space twice.

(8) Unless there is a preamble, which is rare, the enacting clause follows the title: (Do not indent.) BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA: (A resolution or memorial has no enacting clause.)

(9) Indent five spaces for a section, for each subsection except the first one, and for each subparagraph.

EXAMPLE Section 1. (1) * * * * * * * * * * * * * *.

(2)

(3)

(a) *.

(b)

See Chapter III for additional information on the construction and numbering of sections, subsections and paragraphs.

(10) Never exceed 32 lines. Do not separate a word at the end of the page if it can be avoided.

(11) Number the page at the bottom center as follows:

—1—

Do not over capitalize. Examples: The constitution of the state of Montana; governor of Montana; the congress of the United States; city of Billings; Silver Bow County. See chapter II for suggested capitalization.

Consult Webster's New International Dictionary for dividing, spelling and compounding of words. (House Rule 59) If there is more than one choice, use the first one.

When typing a resolution or memorial, there is no enacting clause. Two double spaces follow the title and there should be two double spaces between the last "WHEREAS" clause and the "BE IT RESOLVED" clause.

See Chapter V of this manual and the samples in the appendix for more information on typing resolutions and memorials.

When proofreading a draft of a bill, check the following things carefully:

Make certain that the numbers of all sections amended or repealed in the body of the bill correctly appear in the title and in the key.

If a section is amended, proofread it against the current version in the Montana codes. Don't forget to check the pocket supplement. Make sure that the new matter is underlined and that any omitted words are shown with a line through them.

Preparing Bill Covers

Joint Rule 20 requires that all bills introduced have "white covers of a substantial material." White manuscript covers, 9"x15", can be obtained from most office supply houses.

First make a fold one inch from one end of the cover. (This tab will be folded over the top of the bill and fastened by staple when the bill and cover are assembled.) Next fold the cover in the middle so one end meets the fold on the other end; then repeat the process so the back of the cover will be divided into four equal parts.

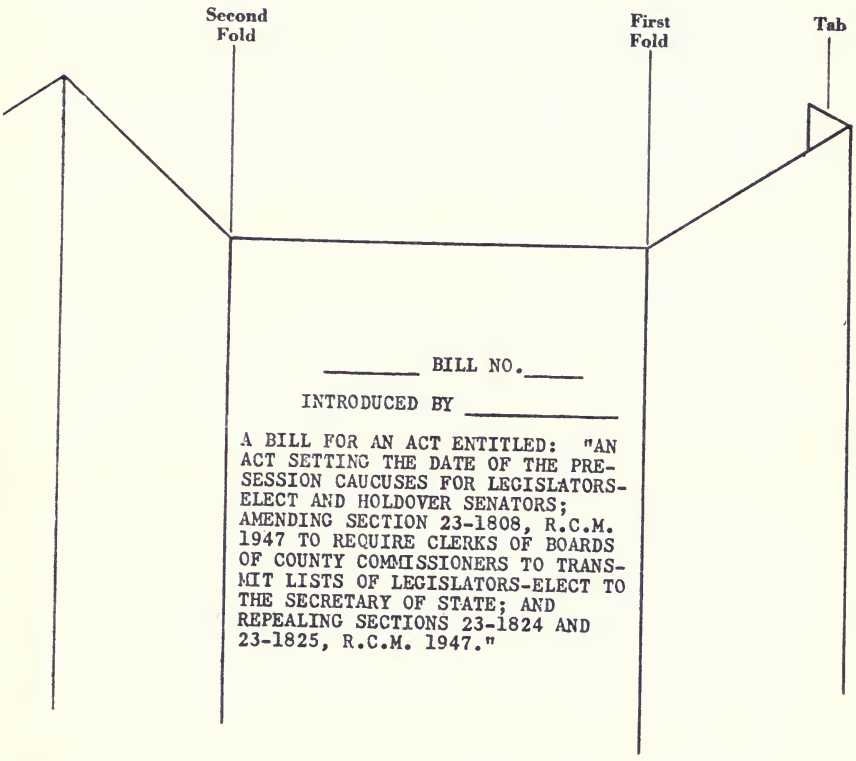
The first fold from the tab on the back of the bill is the right margin for typing the title; the second or middle fold is the left margin.

(1) Type: ".....BILL NO....." six lines from the edge of the cover between the first and second folds.

(2) Double space and type "INTRODUCED BY .....".

(3) Double space again and type the entire title, single spaced in caps.

When the title is typed on the cover and proofread, slip the bill under the tab and fasten with a staple on each side. The corners of the tab are sometimes trimmed off to avoid snagging.



Introducing Bills

A bill may be introduced by presenting it in quadruplicate to the chief clerk of the house or the secretary of the senate. The following rules relate to bill introduction.

SENATE RULE NO. X

1. *Endorsement.* All bills, joint resolutions, resolutions, joint memorials, memorials, reports and papers, when introduced, shall be endorsed with the name of the Senator or committee presenting same to the Senate.

2. *Introduction of a Bill Similar to one Finally Rejected by Senate.* No bill shall be introduced or reintroduced in the Senate or considered by the Senate after a previous bill containing the same subject matter or substantially the same subject matter and designed to accomplish the same purpose has been finally rejected by the Senate.

4. *Introduction After the Twentieth Day.* No Bills other than Substitute Bills for Bills then pending shall be introduced after the twentieth Legislative day, except upon the two-thirds majority vote of the Senate.

HOUSE RULE NO. 36

Introduction of Bills

1. No bill for the appropriation of money, except for expenses of State Government, shall be introduced within ten days of the close of the session, except by unanimous consent. This rule shall not be suspended. Section 21, Article 5.

2. No bills may be introduced after the 20th day and all bills must be received by the Chief Clerk of the House prior to 5:00 P.M. of the 20th day, excepting revenue bills, which may be introduced up to and including the 25th day, which bills also must be received by the Chief Clerk by 5:00 P.M. of said 25th day. Substitute bills for bills pending and appropriation bills are excluded from the provisions of this subsection of this rule.

3. No bill, memorials or resolutions shall be introduced or re-introduced in the House or considered by the House after a previous bill containing the same subject matter or substantially the same subject matter and designed to accomplish the same purpose has been finally rejected by the House.

JOINT RULE NO. 23

Introduction of Appropriation Bills

All bills carrying or providing for appropriation of public moneys shall originate in the House of Representatives. Any member of the Senate desiring the in-

troduction of a bill carrying an appropriation shall be permitted to transmit the same to the Speaker of the House, who will provide for its introduction by request.

Amending Bills

Most amendments are prepared by bill drafters employed by the legislature, or by legislators themselves. When called upon to draft an amendment, the draftsman should adequately identify all of the proposed changes by specific reference to the word, line and page of the bill.

The form of amendments is not specified by rule, although a printed form for committee of the whole amendments is usually used. However, amendments may simply be typed in triplicate on plain white paper eight and one-half by eleven inches.

The following is an example of a committee of the whole amendment:

HOUSE BILL NO. 344

Mr. Chairman: I move to amend section 1 of House Bill 344 by deleting in line 20, page 3 of the original bill, being lines 56 and 57, page 4 of the printed bill, the comma and the words and figures "not to exceed forty dollars ($40.00)" and inserting in lieu thereof the words and figures *"less than thirty dollars ($30.00)."*

If any words added to or deleted from a bill are new material added to an existing statute they should be underlined as in the case of an original bill. If a bill has not yet been printed, it is only necessary to refer to the lines and pages of the original bill; after printing, an amendment should refer to both the original and printed bill. A copy of the original bill may be checked out of the office of the chief clerk of the House or secretary of the Senate. Do not include a reference to the mimeographed copy of a bill.

Amendments by a standing committee of the legislature are prepared on a slightly different form, but are normally typed by the committee clerk. The form for

committee of the whole amendments shown above contains the same basic information and can be transcribed to the proper form by the committee clerk.

Article V, section 19 of the constitution provides "No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose." An amendment that merely extends or limits the purpose or scope of a bill, or that is germane to and within the scope of the original bill is not prohibited by this provision.

The constitutional requirement in Article V, section 25, that so much of a law as is amended "shall be reenacted and published at length" does not apply to amendments to bills under consideration by the legislature, but only to laws.

APPENDIXES

Appendix A

SAMPLE OF BILL

_____BILL NO.____

INTRODUCED BY_____

23-1808, 23-1824, 23-1825

A BILL FOR AN ACT ENTITLED: "AN ACT SETTING THE DATE OF THE PRE-SESSION CAUCUSES FOR LEGISLATORS-ELECT AND HOLDOVER SENATORS; AMENDING SECTION 23-1808, R.C.M. 1947 TO REQUIRE CLERKS OF BOARDS OF COUNTY COMMISSIONERS TO TRANSMIT LISTS OF LEGISLATORS-ELECT TO THE SECRETARY OF STATE; AND REPEALING SECTIONS 23-1824 AND 23-1825, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. In order to insure a more effective utilization of the sixty-day legislative session by making possible an earlier and more orderly organization of the legislative assembly, legislators-elect shall caucus in Helena at 1 p.m. on the second Saturday of December, following each general election. The purpose of the caucuses is to nominate members of each political party for the various legislative offices and to conduct such other pre-session business as may be necessary.

The secretary of state shall consult with the state chairman of each political party and shall make the necessary arrangements for the places in which the caucuses shall be held. Not later than twenty (20) days following each general election, the secretary of state shall mail to each legislator-elect and to each holdover senator by certified mail notice of the time and place of the caucuses.

Upon the convening of each caucus a chairman shall be elected by the members to preside over the business of the caucus.

Section 2. Section 23-1808, R.C.M. 1947 is amended to read as follows:

"23-1808. Certificates issued by the clerk -- Notice to Secretary of State. The clerk of the board of county commissioners must immediately make out and deliver to such person ~~(except to the person elected district judge)~~ a certificate of election signed by him and authenticated with the seal of the board of county commissioners. Immediately after the board declares elected the persons receiving the highest number of votes for state representative and state senator, the clerk shall transmit a list of names of these legislators-elect to the secretary of state."

Section 3. Sections 23-1824 and 23-1825, R.C.M. 1947 are repealed.

Appendix B

SAMPLE OF CONSTITUTIONAL AMENDMENT

_____BILL NO._____

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO SECTION 11, ARTICLE XI OF THE CONSTITUTION OF MONTANA VESTING SUPERVISION AND CONTROL OF THE UNIVERSITY OF MONTANA IN A SEPARATE STATE BOARD OF REGENTS."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. Section 11, Article XI of the constitution of the state of Montana is amended to read as follows:

"Section 11. The general control and supervision of the ~~state university and the~~ various ~~other~~ state educational institutions not part of the university of Montana shall be vested in a state board of education, whose powers and duties shall be prescribed and regulated by law. The said board shall consist of eleven members, the governor, state superintendent of public instruction, and attorney general, being members ex-officio; the other eight members thereof shall be appointed by the governor; subject to the confirmation of the senate, under the regulations and restrictions to be provided by law.

The general control and supervision of the university of Montana shall be vested in a state board of regents, whose powers and duties shall be prescribed and regulated by law. The said board shall consist of eight (8) members to be appointed by the governor, subject to the confirmation of the senate, under the regulations and restrictions to be provided by law. This amendment is effective July 1, 1963."

Section 2. When this amendment is submitted to the electors of the state of Montana there shall be printed on the ballot the

full title and section 1 of this act and the following words:

" ☐ For the above amendment.

☐ Against the above amendment."

Appendix C

SAMPLE OF JOINT RESOLUTION

HOUSE JOINT RESOLUTION NO.____

INTRODUCED BY _____

A JOINT RESOLUTION OF THE SENATE AND HOUSE OF REPRESENTATIVES DIRECTING THE MONTANA HIGHWAY DEPARTMENT TO MARK APPROACHES TO OLDER, NARROW BRIDGES WITH LARGER, MORE CONSPICUOUS SIGNS AND TO REPLACE OLD BRIDGES WITH WIDER, SAFER BRIDGES WHEN REASONABLY POSSIBLE.

WHEREAS, the old-fashioned, narrow bridges on Montana's highways have been responsible for traffic accidents, resulting in injury and loss of life to motorists, and

WHEREAS, intermittent stretches of new, well-marked unrestricted four-lane highways have contributed to the dangerous situation by leaving unwary motorists unprepared for the narrow bridges on the older highways.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana highway department be directed to proceed at once to mark approaches to old, narrow bridges on Montana highways with larger and more conspicuous signs, and

BE IT FURTHER RESOLVED, that the highway department replace older bridges with wider, safe bridges as soon as reasonably possible, and

BE IT FURTHER RESOLVED, that a copy of this joint resolution be sent by the secretary of state of Montana to the members of the state highway commission and to the state highway engineer.

Appendix D

SAMPLE OF JOINT MEMORIAL

SENATE JOINT MEMORIAL NO.____

INTRODUCED BY _____

A JOINT MEMORIAL OF THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA, TO THE MONTANA CONGRESSIONAL DELEGATION ENDORSING U. S. SENATE BILL NO. 162 CREATING A COMMISSION ON NOXIOUS AND OBSCENE MATTERS AND MATERIALS AND URGING SUPPORT OF THAT BILL BY THE MONTANA CONGRESSIONAL DELEGATION.

WHEREAS, Senate Bill No. 162 presently under consideration by the United States Senate would create a commission on noxious and obscene matters and materials among whose membership would be representatives from the federal, state and local governmental levels, as well as private citizens, and

WHEREAS, Senate Bill No. 162 recites that "The Congress finds that traffic in obscene matters and materials is a matter of grave national concern," and

WHEREAS, it is the purpose of Senate Bill No. 162 to bring about a coordinated effort at the various governmental levels, and by public and private groups, to combat by all constitutional means this pernicious traffic.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the legislative assembly of the state of Montana recognizes the public interest involved in combating the traffic in obscene material and further recognizes the desirability of protecting the public, and particularly minors, from the morally corrosive effects of such material, and

BE IT FURTHER RESOLVED, that the legislative assembly of the state of Montana endorses Senate Bill No. 162 and urges support of said bill by the Montana congressional delegation, and

BE IT FURTHER RESOLVED, that the secretary of state be instructed to send copies of this memorial to the Honorable Mike Mansfield and Lee Metcalf, Senators from the state of Montana, and the Honorable Arnold Olsen and James Battin, Congressmen from the state of Montana.

Appendix E

SAMPLE OF SIMPLE RESOLUTION

SENATE RESOLUTION NO.____

INTRODUCED BY _____

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA DIRECTING THE CAPITOL CUSTODIAN TO SEND THE CHAIRS OF THE SENATE CHAMBER TO THE STATE PRISON FOR REFINISHING, UPHOLSTERING AND REPAIR.

WHEREAS, the chairs of the senate chamber have through constant use over the years, become unsightly, and are badly in need of refinishing, upholstering, and repair; and

WHEREAS, the chairs of the senate could be sent during the interim period of the legislature now in session to the state prison, for refinishing, upholstering and repair by the prison inmates as a rehabilitation project.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the capitol custodian is hereby directed, to send the chairs of the senate chamber of the state of Montana, to the state prison for refinishing, upholstering and repairing, by the inmates, during the interim period of the legislature now in session.

BE IT FURTHER RESOLVED, that the custodian have the work completed and the chairs returned to the Montana senate chamber by January 1, 1963.

BE IT FURTHER RESOLVED, that the secretary of the senate send copies of this resolution to the capitol custodian, the board of state prison commissioners and the warden of the state prison.

Appendix F

SOME PROVISIONS OF THE MONTANA CONSTITUTION RELATING TO BILL DRAFTING

Enacting Clause

The enacting clause of every law shall be as follows: "Be it enacted by the Legislative Assembly of the State of Montana." (Art. V, Sec. 20)

Laws To Be Passed By Bill; Amendments

No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose. (Art. V, Sec. 19)

Appropriation Bills

No bill for the appropriation of money, except for the expenses of the government, shall be introduced within ten days of the close of the session, except by unanimous consent of the house in which it is sought to be introduced. (Art. V, Sec. 21)

No money shall be paid out of the treasury except upon appropriations made by law, and on warrant drawn by the proper officer in pursuance thereof, except interest on the public debt. (Art. V, Sec. 34)

The general appropriation bills shall embrace nothing but appropriations for the ordinary expenses of the legislative, executive and judicial departments of the state, interest on the public debt and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject. (Art. V, Sec. 33)

No appropriation shall be made for charitable, industrial, educational or benevolent purposes to any person, corporation or community not under the absolute control of the state, nor to any denominational or sectarian institution or association. (Art. V, Sec. 35)

Reference To Committees

No bill shall be considered or become a law unless referred to a committee, returned therefrom, and printed for the use of the members. (Art. V, Sec. 22)

Bills To Contain But One Subject; To Be Expressed In Title

No bill, except general appropriation bills, and bills for the codification and general revision of the laws, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed. (Art. V, Sec. 23)

Revising Or Amending Laws

No law shall be revised or amended, or the provisions thereof extended by reference to its title only, but so much thereof as is revised, amended or extended shall be reenacted and published at length. (Art. V, Sec. 25)

Bills For Raising Revenue

All bills for raising revenue shall originate in the house of representatives; but the senate may propose amendments, as in the case of other bills. (Art. V, Sec. 32)

Delegating Power

The legislative assembly shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, or to levy taxes, or to perform any municipal functions whatever. (Art. V, Sec. 36)

Ex Post Facto Law

No ex post facto law nor law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislative assembly. (Art. III, Sec. 11)

Creation of Debt

The legislative assembly shall not in any manner create any debt except by law which shall be irrepealable until the indebtedness therein provided for shall have been fully paid or discharged; such law shall specify the purpose to which the funds so raised shall be applied and provide for the levy of a tax sufficient to pay the interest on, and extinguish the principal of such debt within the time limited by such law for the payment thereof; but no debt or liability shall be created which shall singly, or in the aggregate with any existing debt or liability, exceed the sum of one hundred thousand dollars ($100,000) except in case of war, to repeal invasion or suppress insurrection, unless the law authorizing the same shall have been submitted to the people at a general election and shall have received a majority of the votes cast for and against it at such election. (Art. XIII, Sec. 2)

Retrospective Laws Benefiting Corporation or Individual Prohibited

The legislative assembly shall pass no law for the benefit of a railroad or other corporation, or any individual or association of individuals, retrospective in its operation, or which imposes on the people of any county or municipal subdivision of the state, a new liability in respect to transactions or considerations already passed. (Art. XV, Sec. 13)

Lotteries Prohibited

The legislative assembly shall have no power to authorize lotteries, or gift enterprises for any purpose, and shall pass laws to prohibit the sale of lottery or gift enterprise tickets in this state. (Art. XIX, Sec. 2)

Trust Fund Limitation

No act of the legislative assembly shall authorize the investment of trust funds by executors, administrators, guardians or trustees in the bonds or stock of any private corporation. (Art. V, Sec. 37)

Railroad Construction Limitation

The legislative assembly shall have no power to pass any law authorizing the state, or any county in the state, to contract any debt or obligation in the construction of any railroad, nor give or loan its credit to or in aid of the construction of the same. (Art. V, Sec. 38)

Obligations Held By State

Except as hereinafter provided, no obligation or liability of any person, association or corporation, held or owned by the state, or any municipal corporation therein, shall ever be exchanged, transferred, remitted, released or postponed, or in any way diminished by the legislative assembly; nor shall such liability or obligation be extinguished, except by the payment thereof into the proper treasury.

It shall however be lawful for the legislative assembly, in such manner as it may direct, to authorize the cancellation of any personal property taxes which are not a lien on real estate and which have been delinquent for ten (10) years or more.

It shall also be lawful for the legislative assembly, in such manner as it may direct, to authorize the cancellation of any contractual obligation owed to or held by a county, for seed grain, feed or other relief, the collection of which obligation is barred by the statute of limitations. (Art. V, Sec. 39)

Local or Special Laws

Article V, section 26 prohibits the legislature from passing local or special laws in any of the following cases:

(1) For granting divorces;

(2) For laying out, opening, altering or working roads or highways;

(3) Vacating roads, town plats, streets, alleys or public grounds;

(4) Locating or changing county seats;

(5) Regulating county or township affairs;

(6) Regulating the practice in courts of justice;

(7) Regulating the jurisdiction and duties of justices of the peace, police magistrates, constables;

(8) Changing the rules of evidence in any trial or inquiry;

(9) Providing for changes of venue in civil or criminal cases;

(10) Declaring any person of age;

(11) For limitation of civil actions, or giving effect to informal or invalid deeds;

(12) Summoning or impaneling grand or petit juries;

(13) Providing for the management of common schools;

(14) Regulating the rate of interest on money;

(15) The opening or conducting of any election, or designating the place of voting;

(16) The sale or mortgage of real estate belonging to minors or others under disability;

(17) Chartering or licensing ferries or bridges or toll roads;

(18) Chartering banks, insurance companies and loan and trust companies;

(19) Remitting fines, penalties or forfeitures;

(20) Creating, increasing or decreasing fees, percentages or allowances of public officers;

(21) Changing the law of descent;

(22) Granting to any corporation, association or individual the right to lay down railroad tracks, or any special or exclusive privilege, immunity or franchise whatever;

(23) For the punishment of crimes;

(24) Changing the names of persons or places;

(25) For the assessment or collection of taxes;

(26) Affecting estates of deceased persons, minors or others under legal disabilities;

(27) Extending the time for the collection of taxes;

(28) Refunding money paid into the state treasury;

(29) Relinquishing or extinguishing in whole or in part the indebtedness, liability or obligation of any corporation or person to this state, or to any municipal corporation therein;

(30) Exempting property from taxation;

(31) Restoring to citizenship persons convicted of infamous crimes;

(32) Authorizing the creation, extension or impairing of liens;

(33) Creating offices, or prescribing the powers or duties of officers in counties, cities, township or school districts;

(34) Authorizing the adoption or legitimation of children.

In all other cases where a general law can be made applicable, no special law can be enacted.